U.S. IMPLEMENTATION OF CITES

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

THE WAY THE UNITED STATES CAN IMPROVE THE IMPLEMENTATION OF CITES TO ENSURE THAT THE ENDANGERED AND THREATENED SPECIES OF FLORA AND FAUNA WILL LIVE AND FLOURISH

JULY 14, 1988

Serial No. 100-83

Printed for the use of the
Committee on Merchant Marine and Fisheries

U.S. GOVERNMENT PRINTING OFFICE

90-434 WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

H561-30

COMMITTEE ON MERCHANT MARINE AND FISHERIES

WALTER B. JONES, North Carolina, *Chairman*

MARIO BIAGGI, New York
GLENN M. ANDERSON, California
GERRY E. STUDDS, Massachusetts
CARROLL HUBBARD, JR., Kentucky
DON BONKER, Washington
WILLIAM J. HUGHES, New Jersey
MIKE LOWRY, Washington
EARL HUTTO, Florida
W.J. (BILLY) TAUZIN, Louisiana
THOMAS M. FOGLIETTA, Pennsylvania
DENNIS M. HERTEL, Michigan
ROY DYSON, Maryland
WILLIAM O. LIPINSKI, Illinois
ROBERT A. BORSKI, Pennsylvania
THOMAS R. CARPER, Delaware
DOUGLAS H. BOSCO, California
ROBIN TALLON, South Carolina
SOLOMON P. ORTIZ, Texas
CHARLES E. BENNETT, Florida
THOMAS J. MANTON, New York
OWEN B. PICKETT, Virginia
JOSEPH E. BRENNAN, Maine
GEORGE J. HOCHBRUECKNER, New York
BOB CLEMENT, Tennessee

ROBERT W. DAVIS, Michigan
DON YOUNG, Alaska
NORMAN F. LENT, New York
NORMAN D. SHUMWAY, California
JACK FIELDS, Texas
CLAUDINE SCHNEIDER, Rhode Island
HERBERT H. BATEMAN, Virginia
JIM SAXTON, New Jersey
JOHN R. MILLER, Washington
HELEN DELICH BENTLEY, Maryland
HOWARD COBLE, North Carolina
MAC SWEENEY, Texas
CURT WELDON, Pennsylvania
PATRICIA SAIKI, Hawaii
WALLY HERGER, California
JIM BUNNING, Kentucky
ERNEST L. KONNYU, California

EDMUND B. WELCH, *Chief Counsel*
BARBARA L. CAVAS, *Chief Clerk*
GEORGE D. PENCE, *Minority Staff Director*
DUNCAN C. SMITH III, *Minority Chief Counsel*

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

THOMAS M. FOGLIETTA, Pennsylvania, *Chairman*

WALTER B. JONES, North Carolina
MIKE LOWRY, Washington
GERRY E. STUDDS, Massachusetts
(Ex Officio)
EARL HUTTO, Florida
(Ex Officio)
W.J. (BILLY) TAUZIN, Louisiana
(Ex Officio)

CLAUDINE SCHNEIDER, Rhode Island
HELEN DELICH BENTLEY, Maryland
ROBERT W. DAVIS, Michigan
(Ex Officio)
NORMAN F. LENT, New York
(Ex Officio)
DON YOUNG, Alaska
(Ex Officio)
NORMAN D. SHUMWAY, California
(Ex Officio)
JACK FIELDS, Texas
(Ex Officio)

PHIL ROTONDI, *Staff Director*
KURT R. OXLEY, *Counsel*
PETER MARX, *Minority Professional Staff*

CONTENTS

	Page
Statement of:	
Bavin, Clark, Chief of Law Enforcement, Department of the Interior	3
Bentley, Hon. Helen Delich, a U.S Representative from Maryland (prepared statement)	39
Foglietta, Hon. Thomas M., chairman, Subcommittee on Oversight and Investigations	1
Gleiber, John, Animal Welfare Institute	26
Hemley, Ginette, Director, Traffic (U.S.A.), World Wildlife Fund	18
Prepared statement	52
Kosloff, Laura H., World Resources Institute (prepared statement)	67
Lambertson, Ronald, Northeast Regional Director, Fish and Wildlife Service, Department of the Interior	3
Prepared statement	42
McManus, Roger, President, Center for Environmental Education	28
Prepared statement	94
Parsons, Ed, Department of State	3
Prepared statement	49
Schneider, Hon. Claudine, a U.S. Representative from Rhode Island	2
Stevens, Christine, Secretary, Society for Animal Protective Legislation (prepared statement)	89
Teleki, Dr. Geza, chairman, Committee for Conservation and Care of Chimpanzees, on behalf of Dr. Jane Goodall, Board of Directors, the Goodall Institute (prepared statement)	59
Trexler, Mark, Associate, World Resources Institute	22
Prepared statement	67
Van Note, Craig, Executive Vice President, Monitor Consortium	30
Prepared statement	101
Additional material supplied:	
Interior Department:	
Coral From the Philippines	12
Implementing the Pelly Amendment	16
Kosloff, Laura H. and Mark C. Trexler: Environmental Law Reporter News and Analysis, "The Convention on International Trade in Endangered Species: No Carrot, But Where's the Stick?"	74
Legislative History of CITES Related Amendments to the Fisherman's Protective Act	117
State Department:	
Matthew Block Case	9
Violator Countries	38
Communication submitted:	
Cranston, Hon. Alan, et al.: Letter of December 4, 1980, to Cecil D. Andrus, Secretary of the Interior	113

U.S. IMPLEMENTATION OF CITES

THURSDAY, JULY 14, 1988

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m. in room 1334, Longworth House Office Building, Hon. Thomas M. Foglietta (chairman of the subcommittee) presiding.

Present: Representatives Foglietta, Schneider, and Bentley.

Staff present: Wendell Pritchett, Kurt Oxley, Barbara Cavas, Lori Williams, Peter Marx, and Tom Melius.

STATEMENT OF HON. THOMAS M. FOGLIETTA, CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Mr. FOGLIETTA. Good morning. The subcommittee will come to order.

I'd like to welcome you here and hope that this will be an interesting and informative hearing on the very important topic on protection of the world's endangered species.

I hope this hearing will provide a record which will give direction and support to our representatives at the upcoming meeting of the Convention on Trade and Endangered Species.

The establishment of CITES was a major step in the protection of the earth's wildlife. In CITES we have established a system to protect endangered and possible endangered species from trade which would have a detrimental effect on their population.

CITES was just a beginning. We have a long way to go to ensure that our flora and fauna are allowed to live and flourish. But through the CITES system we have the means to reach this goal.

I look forward to hearing from our witnesses today as they testify to the ways we can improve the implementation of this important treaty in both the United States and throughout the world.

I am especially interested in how the United States can improve the implementation of the ivory export quota system and how we can find new ways to protect the African elephant from what will certainly be extinction if swift action is not taken.

I would especially like to compliment the leadership of our ranking minority member, Miss Schneider, on this issue. Miss Schneider has been a vocal advocate of the protection of this nation's resources, as well as the world's. Her untiring involvement in these issues, and in CITES, in particular, have been invaluable.

At this time I would like to recognize Miss Schneider.

STATEMENT OF HON. CLAUDINE SCHNEIDER, A U.S. REPRESENTATIVE FROM RHODE ISLAND

Miss SCHNEIDER. Thank you very much, Mr. Chairman.

I think we all recognize that without your leadership we wouldn't be here right now having this opportunity to discuss the various parameters of CITES and ways that we can make it better.

Needless to say, the United States is a very significant player in the whole international trade. When we look at the big picture of international trade in wildlife and wildlife products it is worth at least $5 billion each year, and the United States is the largest participant, with the trade valued at over $1 billion.

The bulk of our involvement is as an importer, with 75 percent of that billion dollar trade consisting of imports, making the United States the world's largest market for wildlife and wildlife products.

We have a very broad and large import business going on in this country—in an average year, anywhere from one to three million raw fur skins are taken in, 12,000 to 14,000 live primates that are primarily used for biomedical research, four to six million pieces of carved African elephant ivory, and the list goes on and on.

It is estimated that the illegal international wildlife trade is perhaps as much as one and a half billion dollars, and the U.S. Fish and Wildlife Service estimates that illegal imports into the United States is between $100 million and $200 million annually.

So I have no doubt that CITES is the most significant vehicle in which the world's unique animal and plant species can be preserved. But I also have no doubt that CITES is right now, unfortunately, not doing a very successful job.

This hearing, which I requested, is meant to see what the United States can unilaterally do to strengthen CITES, and to make it achieve the goals for which it was created, which is primarily to protect certain species of threatened and endangered wildlife and plants from commercial exploitation.

The United States has consistently been a leader in protecting and preserving endangered and threatened species, and I believe that this leadership also applies to CITES. We were the first country to ratify CITES, and we have the world's oldest and strongest infrastructure with which to properly implement the treaty.

I also recognize the herculean task facing the Fish and Wildlife Service of controlling up to 90,000 shipments of wildlife with only 56 wildlife inspectors.

This oversight hearing will be looking at ways to better utilize our limited resources in strengthening our commitment to and our implementation of CITES.

There are a number of different specific incidents that greatly concern me, and many of these examples seem to indicate an errant policy rather than a reflection of limited resources.

Rather than my sharing with you all of those specific incidents, I think we will have the opportunity to ask some questions about many of them.

One of the important goals of this hearing is to clarify the U.S. policy as it relates to CITES, and also to prevent these kinds of incidents from occurring again.

So I look forward to the testimony on the part of our expert witnesses, Mr. Chairman. And, once again, I thank you for calling this hearing.

Mr. FOGLIETTA. I thank you, Miss Schneider.

First I'd like to invite the members of panel one to the table: Mr. Ron Lambertson, Mr. Clark Bavin, accompanied by Mr. Edmund Parsons.

Mr. Lambertson, will you be testifying first?

Mr. LAMBERTSON. Yes.

Mr. FOGLIETTA. You may proceed.

STATEMENT OF RONALD LAMBERTSON, NORTHEAST REGIONAL DIRECTOR, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY CLARK BAVIN, CHIEF OF LAW ENFORCEMENT, AND ED PARSONS, DEPARTMENT OF STATE

Mr. LAMBERTSON. Thank you, Mr. Chairman.

With your approval, I will submit the full statement for the record and merely summarize.

As you mentioned, we do have Mr. Clark Bavin with us today. He is the chief of law enforcement, which has primary responsibility for the implementation of CITES at the ports of entry.

We also have Mr. Ed Parsons from the Department of State. The Department of State is very actively involved in a lot of the international negotiations associated with CITES implementation.

Mr. Chairman and Miss Schneider, I appreciate the opportunity to appear here today to discuss CITES.

I am Ronald Lambertson, and I have recently been appointed to become regional director for the Northeast region. However, I am here today in my capacity as chairman of the CITES Standing Committee.

Mr. Chairman and Miss Schneider, I have been personally and professionally associated with CITES and the Endangered Species Act since their inception. I feel that we have made tremendous strides in our efforts to control the international trade in fish, wildlife, plants, and their products, but we still have a great distance to travel before we can say that the fish, wildlife, and plant populations on this planet are safe from uncontrolled exploitation.

Under the CITES Convention, 95 countries have pledged to work together to control trade in fish, wildlife, and plants, and their parts and products. In effect, CITES is a contract between the developed, importing countries such as the United States, and the less-developed producer countries of Africa, Asia, and South America.

Under this contractual arrangement, the importing countries, such as the United States, have agreed to restrict imports in accord with the terms of the Convention, and to support the export restrictions from the producing nations.

In carrying out the contractual responsibilities of a leading consumer nation, the United States has taken the following specific actions to implement CITES:

First, we have designated nine specific ports of entry. These designated ports receive all import shipments of fish and wildlife, except for a few limited exceptions.

Second, the wildlife inspector program that Miss Schneider mentioned has been established, with 56 full-time inspectors to regulate the shipments.

Third, a separate management authority and a scientific authority office have each been established to provide necessary regulatory and scientific support.

Fourth, special agents with training and qualifications similar to that of FBI agents are available in our division of law enforcement to conduct investigations of possible violations uncovered by our inspectors.

Fifth, a law enforcement management information system—we refer to it as LEMIS—which is a national computer network, has been established for processing and retrieving investigative and administrative data about imports and exports.

With this organizational infrastructure, the Fish and Wildlife Service has set about upholding its end of the CITES contractual bargain. But, as with many such arrangements, the devil is in the detail of the agreement.

Some of the devilish details that we have to deal with include sheer volume. As Miss Schneider mentioned, approximately 90,000 shipments a year come into the United States. Many of these shipments now arrive in what is called containerized cargo crates, which are large, sealed, metal crates, approximately 8 feet by 8 feet by 40 feet long.

Three million of these containerized cargo shipments arrive in the United States each year. The inspection of these shipments is very costly and time-consuming. For these reasons, only a small number of these containerized cargo shipments can be inspected. These types of shipments provide a target of opportunity for smugglers.

Another problem is that wildlife can be sent into the U.S. through international mail facilities. Millions of packages arrive through the mail each day. Smugglers are able to avoid our ports of entry by using mail shipments. Wildlife shipments that are contained in mail are very difficult to detect.

As I mentioned earlier, CITES is our contract with the nations that produce fish and wildlife. CITES also imposes obligations on producer nations; however, we have found that our enforcement efforts are often frustrated by the shortcomings of the producer nations.

Some examples of these shortcomings include: One, producer countries often certify that wildlife that has actually been removed from the wild was "bred in captivity," and is not subject to the same strict controls for wild populations.

Our inspectors have a very difficult time determining whether these are actually legitimate bred-in-captivity determinations.

Two, sometimes producer countries will ban the export of endangered wildlife products, but huge stockpiles of the product are still held in intermediary countries.

As long as these huge stockpiles exist, it is very difficult for our inspectors to determine whether the shipments are from the stockpiles or from the wild, protected populations.

Three, when producer countries share a species—that is, the species occurs naturally in more than one country—a species of wildlife can be, and often is, smuggled across the borders of those countries, and we find that exports are reported to be coming from the one or two countries that have not imposed export controls.

The last problem which I would like to cite is by far the most pervasive—the lack of sound biological information on populations of heavily traded species.

Without basic information, many less-developed countries are authorizing the exports of large numbers of specimens without understanding the implications of those exports. It is imperative that funding sources be found for the collection of the basic data about the impact of trade on what we call "high volume" species.

Mr. Chairman and Miss Schneider, my full statement contains many more specific details of our successes and our failures in the implementation of CITES.

In conclusion, I would like to say that I continue to believe that CITES offers a challenging opportunity to impose an orderly set of controls on the international trade in fish, wildlife, and plants, but we still have a long way to go before we can declare that the system is a success. If that system is to ever become truly effective, it is important that the non-governmental and governmental organizations in the United States continue the leadership role that we have had in the past and cooperate to make CITES work.

Thank you.

[The prepared statement of Mr. Lambertson can be found at end of hearing.]

Mr. FOGLIETTA. I thank you, Mr. Lambertson.

I would suggest that we withhold our questions until we hear from all members of the panel.

Mr. Bavin?

Mr. LAMBERTSON. Mr. Chairman, we don't have any further testimony. I have presented the full statement for the Administration. Mr. Bavin and Mr. Parsons are here merely to help answer questions.

Mr. FOGLIETTA. OK, fine. Then we will proceed with some questions.

May I ask you this—and our questions, I guess, would apply to any member of the panel, and if a question is answered by one member of the panel and any of the other members would like to comment on the answer, feel free to do so.

What percentage of the wildlife shipments, on the average, are inspected upon entering this country?

Mr. BAVIN. Mr. Chairman, we attempt to inspect the paperwork of all the shipments that come to our attention to determine whether we should inspect the actual contents of the shipment. Probably around 20 percent of the actual shipments, themselves, are physically inspected. I might add that in those cases not the entire shipment—maybe only a portion of that shipment or a sample of that shipment—is inspected.

Mr. FOGLIETTA. And you don't feel as though this is adequate to prevent illegal trade into the United States?

Mr. BAVIN. Given our resources, Mr. Chairman, we are inspecting as many as we can. Let's put it that way.

Mr. FOGLIETTA. But do you feel that what you are doing is adequate?

Mr. BAVIN. We would certainly——

Mr. FOGLIETTA. To at least give you a good indication of what is happening in illegal trade?

Mr. BAVIN. We attempt to target physical inspections of the shipments on those species, those countries, and those importers most likely to account for violations. For a lot of those that we do not inspect, we have no reason to believe that there would be violations.

Mr. FOGLIETTA. Is your system of inspection a deterrent to other possible potential violators?

Mr. BAVIN. Is our system—I'm sorry. Would you rephrase that for me?

Mr. FOGLIETTA. Is your twenty percent inspection system sufficient to be a deterrent to other potential violators?

Mr. BAVIN. Obviously we are not deterring all violations. There are certainly a lot of them occurring.

We inspect a higher percentage of wildlife shipments than Customs does, for example, of all imports into the country. It is common knowledge that we don't physically look at every single thing that comes in.

Mr. FOGLIETTA. What are the penalties involved when a person violates the law and brings in illegal shipments?

Mr. BAVIN. The penalties are either forfeiture of the property itself, which is often the case, or, depending on statute under which we prosecute—whether it is actually smuggling or whether it is a violation under the Lacey Act or the Endangered Species Act—the penalties vary.

The new, enhanced penalties can be up to several hundred thousand dollars, although penalties are rarely imposed at that high a level.

Mr. FOGLIETTA. The obvious question is why——

Mr. BAVIN. Because the courts are——

Mr. FOGLIETTA [continuing]. It is not imposed more strongly.

Mr. BAVIN. It depends on whether there is criminal intent and our being able to prove that in order to get the high penalties. Occasionally we do get smugglers and we do get very serious violations; but for the bulk of the violations, we are not able to prove the intent. Therefore the penalties, other than forfeiture, are not that high.

But, again, that depends on the court. It is not up to us to assess the penalty.

Mr. FOGLIETTA. Mr. Lambertson, you talked about the problems you are having with containerized shipments, which is very easy for smugglers to use. You talked about the problem. You didn't make any suggestions as to how you are coping with that problem or how we should try to cope with it.

Mr. LAMBERTSON. This is the same problem that Customs has. If you have been to a place like Newark, New Jersey, you will see

these containers coming off of the ships and being unloaded literally thousands at a time. Each of the containers looks like a large semi-trailer without the wheels on it.

The unions in most of those ports have very strict requirements as to how those can be opened. They can only be opened in accordance with the union contract, which means that so many union members have to be involved, and it is a very timely and costly process to open and inspect one of those containers.

Therefore, we use the same process that Customs uses. We inspect the documents. We are aware of who is involved with the shipments, and we try to make judgment decisions as to which of those containers are the likely ones to have some contraband, either for Customs or for ourselves.

Now, if Customs has an indication that there are possible problems in a shipment, we immediately go in behind them, because they are spending Federal money to break that shipment down. We are right there with them checking for wildlife violations also. But it has to be, because of the high cost, a very selective process.

The key, I think, continues to be using good judgment to figure out which ones to inspect.

Mr. FOGLIETTA. Could a labor union negotiate away your right to inspect?

Mr. LAMBERTSON. They can negotiate and they have negotiated with the port our rights to actually remove the contents. Just opening the back of that container does not tell you anything. When you open the back two doors of container that is 40 feet long you see a pile of boxes. The actual inspection would require the removal of all of the containers within that larger container and evaluating what is in those smaller boxes, and that is where the high cost comes in.

Mr. BAVIN. Mr. Chairman, if I might add, there is one ray of hope on the horizon. The Customs Service is computerizing the manifests for shipments, and we are working very closely with them and have an agreement with them where we will have access to the Customs computerized data. For ocean cargo we will be able to look at the manifests on a computer screen ten days before the ship arrives, which should give us a lot better opportunity to target inspections and target these containers.

Mr. FOGLIETTA. Mr. Bavin, to go back to your earlier line of questions and answers, you said that under the law you can assess fines up into hundreds of thousands of dollars in certain instances, yet I seem to have read somewhere where the overall average fine against illegal importing is $1.16 per violation. How does that work out? Is it because so many people are just tourists coming in with one small piece of ivory, or what?

Mr. BAVIN. I think, Mr. Chairman, there are two or three things happening here.

One, I think those figures might have been derived from only looking at fines and not the value of forfeitures. In many cases, if a person imports $10,000 worth of a substance that is illegal, the forfeiture alone is tantamount to a $10,000 fine. So I think you have to add the value of forfeitures which is, in effect, the penalty.

Second, for example, if a hunter has a trophy that he has spent $15,000, $20,000, or $25,000 to obtain and that trophy comes in as

an illegal shipment, the commercial value is zero. So he may lose the trophy, which is a penalty to him, but it doesn't show up in our statistics.

Mr. FOGLIETTA. Mr. Parsons, is it true that the Department of State has yet to take strong action to apply diplomatic pressure to encourage the United Arab Emirates to stop violating the CITES restrictions on the elephant ivory trade, despite the U.S. commitment to do so at the last CITES meeting in a letter from a number of congresspeople and a senator asking the State Department to follow through on our commitment?

Mr. PARSONS. Thank you, Mr. Chairman, for giving me this opportunity to speak before the committee.

The situation of the United Arab Emirates is one that has been active on our agenda for some time now.

We have had extensive communication with the embassy there, and they have given us a great deal of advice about how best to approach the leadership of that country.

Its leadership is a rather involved structure, and it is a very sensitive issue for us because we have a number of issues with them. Of course, the Gulf War is a complicating factor.

We have, however, begun to chart out a method whereby we think we can successfully approach the leadership of the United Arab Emirates on this issue. We are concerned with their role in illegal wildlife trade. It goes back a couple of years to our concern with their role in rhino horn and, of course, it extends, as well, to their alleged role in trade of elephant ivory—worked and unworked.

I think now, though, that we have identified exactly the action we need to take, and that action will be taken under the leadership of the CITES standing committee, and Mr. Lambertson, of course, is head of that particular committee and is aware of where we are on that issue.

We hope very shortly, in fact, to implement this plan and to establish the contact that we think will be most effective with the leadership of that country to enable it and to encourage it to cease its alleged role as a factor in illegal trade of wildlife and wildlife products.

Thank you.

Mr. FOGLIETTA. Thank you, Mr. Parsons.

At this point I would like to turn the questioning over to Miss Schneider.

Miss SCHNEIDER. Mr. Parsons, since you are so appreciative of having the opportunity to appear here today I have a special question for you. [Laughter.]

On January 15, 1986, there were 361 squirrel and owl monkeys that were imported into Miami from Bolivia. This happened despite the fact that Bolivia had a ban on exporting any kind of live wildlife. The Bolivian government then had requested that the monkeys be returned and then they were going to release them in the wild. Instead, the animals were distributed to U.S. research laboratories.

The importer—the culprit—was found. It was Matthew Block of Worldwide Primates in Miami, Florida. His passport was seized by the Bolivian government, and he was ordered to remain in the

country. You, in the personage of the State Department, helped Mr. Block to flee from Bolivia.

In 1987 Matthew Block was again involved in an illegal wildlife deal in which he imported two endangered—and I underline "endangered"—mandrill baboons from Equatorial Guinea. No federal action was taken against this man.

I would like to hear your explanation as to why, number one, you got involved in intervening for him with the Bolivian government in the first place when, in fact, he was in violation of international law.

And, second, why did he not receive any kind of fine, payment, penalty, or anything, and was enabled to, a second time, commit a crime?

Mr. PARSONS. I may retract my previous statement about saying I was happy to be here.

Miss SCHNEIDER. I thought you would. [Laughter.]

I thought you would. And this is only the beginning.

Mr. PARSONS. I was wondering why there was a seat belt in this chair.

The issue of Matthew Block is a very involved one. It is one that involves litigation.

The full answer to your question, I think, should be prepared subsequently in writing by our legal advisor in consultation with the Fish and Wildlife Service.

But to address one specific item that you mention in your summary of the Matthew Block situation is the provision of identity papers to him by our embassy in Bolivia.

As I understand it—and I would have to double check this—he did say that he had lost his passport, and the embassy did give him an identity document, which is standard practice for Americans overseas who lose their passport or whose passports are stolen, so that action in and of itself should not be construed as facilitating the man's effort to flee Bolivian prosecution.

But I think in terms of addressing the whole situation it is one that I would prefer to leave to our attorneys to prepare a response to your question and perhaps invite the Fish and Wildlife Service if they have any other information on this particular instance.

Thank you.

[The information to be provided follows:]

MATTHEW BLOCK CASE

In January 1986, 361 monkeys (20 owl monkeys and 341 squirrel monkeys) were exported from Bolivia into the United States for use in non-lethal research sponsored by the Agency for International Development (A.I.D.) to develop a viable malaria vaccine. A.I.D. entered into a contractual arrangement with the American institute of Biological Sciences (A.I.B.S.) to finance procurement of non-human primates for this research program. Worldwide Primates, Inc.—Matthew Block's firm—was in turn engaged by A.I.B.S. to undertake the procurement.

The A.I.D. Inspector General is currently conducting an investigation involving this case. Because the investigation involves possible criminal violations and is confidential, we are unable to discuss this matter further. You may wish to contact directly the A.I.D. Inspector General concerning this case.

The Department and A.I.D. are working closely to ensure that the problems and musunderstanding associated with the exportation of the Bolivian monkeys are not repeated. For example, A.I.D. plans to finance no further wildlife procurement from Bolivia for the malaria research program. Furthermore, A.I.D. and the State Department have agreed that before A.I.D. finances any new purchases of animals out-

side the United States, the U.S. Embassy and A.I.D. Mission will be contacted to obtain guidance on appropriate procedures.

With respect to possible enforcement actions against Mr. Block under the Endangered Species Act, we would refer you to the Fish and Wildlife Service, which has primary responsibility for implementation and enforcement of the Act.

Miss SCHNEIDER. Well, Mr. Parsons, I think that it is very difficult for the United States these days, whether we are talking about global trade, or whether we're talking about dealing with international wildlife challenges. The United States is losing an enormous amount of respect in the way we conduct our business, and if we are to hold our head up high and supposedly provide some leadership on CITES or any other type of international laws, then certainly we have to comply with those laws that we are pretending to provide leadership for.

A year before this case came to public attention, the United States supported a CITES resolution that censured Bolivia for continually circumventing CITES. So I think that what is good for the goose is good for the gander, and I think that it is absolutely critical that we get our act together and make sure that we do not run into more situations like that.

Which leads me to another similar situation.

Mr. Lambertson, I wonder if you can address the situation whereby we have condoned an Ohio Zoo—I don't recall the name of it at this moment—that was permitted to bring in a panda from China. Can you elaborate on that, please?

Mr. LAMBERTSON. Yes, Miss Schneider. The Toledo Zoo, I believe, is the one to which you refer.

Miss SCHNEIDER. Yes. That's it. Thank you.

Mr. LAMBERTSON. They had made application to import two pandas for a temporary loan into the United States. We processed that application and decided to impose some restrictions, but to basically grant that application.

At about the time or shortly after the granting of that application in allowing the import, we learned that 30 other entities were proposing similar imports into the United States or into other countries.

This became a very controversial issue, both with us, the Chinese, and people who are concerned about the conservation of pandas.

In response to that concern, the Director of the Fish and Wildlife Service announced in the Federal Register that we were going to suspend any further issuance of permits and develop a policy, working with the Chinese and various conservation organizations, as to when pandas should be imported for these purposes, and under what conditions.

That request for comments was published in the Federal Register recently, and we hope, within a week or two, to have at least an interim policy setting forth those terms and conditions by which we would allow imports into the United States.

Miss SCHNEIDER. But prior to this there have been policies that the United States was to comply with, and so now the fact that the Toledo Zoo is attempting to do something beyond the policy and you find that there were many other requests, now we're going to soften an existing policy; is that right?

Mr. LAMBERTSON. No, Miss Schneider. I don't see it that way at all.

The Toledo Zoo permit application was issued in accordance with existing policy. That matter is currently in litigation, and the Department of Justice takes the position that the current policy and the current regulation supported the issuance of that permit application.

We are concerned about where this type of situation is going. We are saying current policies and conditions need to be strengthened. If we are going to have 30 more applications coming down the road, we want to further refine the conditions under which this sort of situation is going to be allowed to happen. That is the reason we're going through the public participation process—to develop a new policy and new guidelines as to how these cases should be handled.

Miss SCHNEIDER. Terrific. I might point out that I spoke with Mr. Dunkle about four weeks ago on this topic, and he promised to return my call with an answer and he never did, so I am delighted that you are here to answer on his behalf. But I find it unfortunate that you are the one that has to receive the brunt of my frustration in not having an answer provided in over four weeks.

I might also point out that it is regrettable to me that when we have laws in place—and the members here struggle to come up with the best remedies—that all too often what happens is that citizens have to force the government to take action, whereas that is the responsibility of the government. And all too often we see citizens having to form coalitions, organize, raise money, and do the job that the Federal Government should be doing in the first place. This happens on environmental issues. This happens on animal issues—a whole broad spectrum of things.

So I think that my chairman will agree that these kinds of oversight hearings will continue to be necessary as long as we continue to see the failure to enforce a number of these things.

And we do want to help you. I mean, if there are additional resources or better clarifications that you need, we would like to know what those are so that we can work as a team to do the right thing for all plant and animal species.

There is another case that I am concerned with, and that has to do with the protection of coral from the Philippines. The Philippines has a ban—and you mentioned this in your testimony here—on the export of coral since 1981, and the United States has continued to import coral that has been documented as coming from the Philippines. And I understand that TRAFFIC has notified the Fish and Wildlife Service of this, yet we continue to allow the importation.

From October of 1987 through March of 1988 there were a total of 333 tons of coral that were imported from the Philippines, and I can't help but wonder—this is seven years, now—why this has been allowed to continue over the time period of seven years.

Mr. LAMBERTSON. Mr. Bavin is receiving advice at the moment on that from Nancy Roeper of his staff. [Laughter.]

Mr. BAVIN. Miss Schneider, it is my understanding that we have been working with the Philippine Government through the State Department in an attempt to get actual copies of the ban or decree so that we can enforce their law.

Many times we hear about bans, and a country may publicly announce a ban, but we cannot enforce it until we actually have the documents. Oftentimes they have nuances or exceptions that must be taken into account.

Miss SCHNEIDER. I understand, but seven years? I mean, really now. I know news travels slowly oftentimes, but seven years is a very long time.

Mr. BAVIN. My staff says that the ban was lifted for a portion of those seven years, off and on, as I understand it. I am not in a very good position to explain it to you, but I can assure you we are working, through the State Department, with the Philippine government.

Mr. LAMBERTSON. Miss Schneider, could I suggest that we'd provide a more detailed response for the record in writing?

[The information to be supplied follows:]

CORAL FROM THE PHILIPPINES

The Division of Law Enforcement has copies of Presidential Decree 1219 of October 14, 1977, and Presidential Decree 1698 of May 22, 1980, which set forth the prohibitions and requirements concerning coral. While these decrees prohibit the export of coral, they provide for exceptions whereby from time to time certain species in selected areas may be excluded from the prohibitions.

Because the Service was unable to obtain specific information from the Government of the Philippines concerning the law and the proper authorities for issuing permits, the Service, with the assistance of the Department of State, imposed a trade ban on all wildlife from the Philippines. Notice of the ban was published in the Federal Register on September 30, 1985, and prompted the Government of the Philippines to provide information on permit authorities and Philippine law. Our ban was lifted by notice in the Federal Register on November 15, 1985.

In May 1986, we received notice that the Philippines was lifting its ban for the period of July 1, 1986, to June 30, 1987. A subsequent notice received in June 1986 stated that the ban was lifted for the period of May 1, 1986, to April 30, 1987, to allow the export of existing stocks without any reference to quantities or species. In January 1987, we received notice that the ban had been reinstated effective November 21, 1986.

We have been communicating with the Government of the Philippines in an attempt to obtain clarifications concerning the ban. To date we have not received any clarification. We have asked them to verify the validity of permits which accompany shipments of coral imported into the United States. We have received responses from the Philippine Government that the permits are valid. The Service only allows coral into the United States from the Philippines that is accompanied by permits that have been verified as being valid. Despite numerous requests, the Philippine Government has not substantiated its ban on coral export.

Mr. FOGLIETTA. We'd like to invite your staff person to the table if she would like to come up and answer some of the questions for us; however, we do have a vote on. The vote is on the rule for the Defense Authorization Act, and there probably will be a vote right after that, so we probably will have two votes, so we will be back here in about 15 minutes, and we expect you all—especially you, Mr. Parsons—to be back here.

Mr. PARSONS. My seat belt is locked. [Laughter.]

[Recess.]

Mr. FOGLIETTA. The subcommittee will come to order.

Right before we closed we had invited Mr. Bavin's staff person, who seems to be pretty well informed on these questions, to come to the witness table and to give us some answers if she would so volunteer.

UNIDENTIFIED. I have informed them as to my knowledge on the matter, and I'm happy to let them testify.

Miss SCHNEIDER. Well, Mr. Chairman, I think the record should show that behind every good man is an excellent woman, even though she may be modest. [Laughter.]

I've left you speechless, Mr. Chairman? [Laughter.]

Mr. FOGLIETTA. That applies not only in families, but also in public hearings, I assume.

But you may proceed then, Miss Schneider.

Miss SCHNEIDER. Thank you.

Mr. Lambertson, I think I'll address this question to you: when did the United States make it illegal to import chimpanzees from the wild?

Mr. LAMBERTSON. Chimps were listed as threatened species in the mid-1970's.

Miss SCHNEIDER. OK.

Mr. LAMBERTSON. So under the Endangered Species Act there have been restrictions since that time.

Miss SCHNEIDER. And right now how many chimps are currently imported into the United States, and where do they mostly come from?

Mr. LAMBERTSON. Let me refer to our scientific authority. I believe the number is approximately 100 over the last 10 years? This is Charley Dane, our scientific authority. I've heard the number of approximately 100 over the last 10 years.

Miss SCHNEIDER. OK. Thank you.

Do you know where the funding has originated for the recent joint venture between White Sands Research Center and China?

Mr. LAMBERTSON. No. I have no specific knowledge about any funding from White Sands. We have had a dialogue with the National Institute of Health to try to figure out where they are going with AIDS research and all of the other research that might be using primates. We keep hearing rumors that they are going to be setting up laboratories in other countries.

Miss SCHNEIDER. Yes.

Mr. LAMBERTSON. We have been told that that is not the case. However, I think it is important to recognize that the National Institute of Health is a government organization just like we are.

Miss SCHNEIDER. Right.

Mr. LAMBERTSON. They are bound by the Endangered Species Act. They are bound by both the criminal and the section 7 provisions. I think we have to assume that they are going to comply with that law.

Miss SCHNEIDER. Well, in our business, as you know, we assume nothing. But who is it that you have been dealing with at NIH that has provided you with that assurance?

Mr. LAMBERTSON. Again, Doctor Dane, have you been involved in those meetings?

Mr. DANE. Doctor Gay is one.

Mr. LAMBERTSON. Doctor Gay is the name I am getting. Our management authority, Marshall Jones, is not here today. Our scientific authority, Doctor Dane, has been involved in some of those meetings.

Miss SCHNEIDER. Dane?

Mr. LAMBERTSON. D-A-N-E. Yes. He is the scientific authority of the United States.

Miss SCHNEIDER. What would be the implications of having an American laboratory such as NIH induce a foreign government to import wild-bred chimpanzees in order to breed them for sale in the United States?

Mr. LAMBERTSON. I think that is a very complicated legal issue, but to the extent that NIH is directly involved, either through funding or through authorization, there are possible implications under both section 7, which applies to Federal agencies specifically, and there are section 9 implications as far as potential criminal or civil liabilities.

Miss SCHNEIDER. OK.

Mr. LAMBERTSON. These people, in addition to being government employees, are also citizens of the United States and subject to any criminal provisions.

Miss SCHNEIDER. All right.

It is my understanding that the Fish and Wildlife Service has the discretion to revoke the import licenses of people who violate CITES. Is that right?

Mr. LAMBERTSON. [Nodding.]

Miss SCHNEIDER. How many times has that ever been done?

Mr. BAVIN. I'm not sure whether it has ever been done.

Miss SCHNEIDER. That is my understanding—that it has never once, in the entire history of CITES, ever happened. Why is that?

Mr. BAVIN. The only thing I can say, Miss Schneider, is that it apparently wasn't felt in any situation that we had cause to do that.

Miss SCHNEIDER. Even with repeat violations, such as an example that I cited with the gentleman who was doing the work with Bolivia?

Mr. BAVIN. I can't comment specifically on that situation. But, of course, to revoke an import license puts people out of business, and it is viewed as an extreme sanction. It's not something that would be done lightly. It would be done, I'm sure, if we have——

Miss SCHNEIDER. It seems to me——

Mr. BAVIN [continuing]. Repeat violators, but I don't know of any case where we have revoked permits for other things. It is not as though we don't do it generally, but I don't recall any import/export license being revoked.

Miss SCHNEIDER. Well, you mentioned that by revoking the license you are essentially putting people out of business, and that is, perhaps, a little extreme. But let us remember that this business is illegal, and I don't see any difference between catching a drug dealer who is doing something illegal and putting him out of business, too.

Mr. BAVIN. I don't disagree with you, and I'm sure that if a correct fact situation presented itself we would exercise that option.

Miss SCHNEIDER. Well, we will be sure to bring that to your attention then.

Mr. BAVIN. OK.

Miss SCHNEIDER. If that's all you need.

One last question: although APHIS does refuse entry to shipments of plants that lack CITES documentation, it is my under-

standing that they rarely impose administrative penalties, and that as early as 1987 it had never asked the Department of Justice to initiate a prosecution. Is this true?

Mr. LAMBERTSON. Miss Schneider, when Congress passed the Endangered Species Act, they provided enforcement responsibility to the USDA and APHIS, and APHIS has set up their own system, their own policies, and their own judgments as to what is appropriate for enforcement. So I think it would be more appropriate to address that question to them, since they are a totally different agency.

Miss SCHNEIDER. OK.

The Fish and Wildlife Service now charges a user fee for import licenses. How much money is usually raised from that fee every year?

Mr. LAMBERTSON. Approximately $1.5 million now comes in from that license fee.

Miss SCHNEIDER. And where does that money go?

Mr. LAMBERTSON. That money goes right back into the inspector program. When we got authorization from Congress to impose that license fee and we implemented those regulations, it was with the understanding that it would go back into the inspector program.

Miss SCHNEIDER. Well, some of the questions I have raised, such as your asking the Department of Justice to initiate a prosecution, and the fact that none of the violators have ever had their licenses revoked, it seems that enforcement here is rather soft. If I might make a general comment—the testimony that we have received here today indicates that we are not only walking softly, but we are not even carrying a big stick.

It does concern me that next year we are going to be involved in the reconvening of CITES, and I just wonder if you might offer us some insights, in your capacity as Chair, as to what we might anticipate. I think that we need to do a lot of fast moving to get our house in order for us to even attend the CITES convention and be able to hold our head up.

Mr. LAMBERTSON. Miss Schneider, let me break it down into a number of ways. First, is the level of effort that we can put into enforcement, and I agree that we need to do as much as we possibly can to be sure that we are enforcing the law in every way we can.

There is a lot of unhappiness with the penalties that come out of enforcement proceedings; however, that is not our determination. That is decided by an administrative law judge or a Federal judge. Many times our agents are just as frustrated as you and others are when we take what we feel to be a serious violator before a Federal judge and he gets merely a slap on the hands. But we can't be held accountable for that. We can continue to bring those cases, but there is very little we can do if the judge will not impose serious sanctions.

As far as where CITES is going, I agree that the most important thing we can do for CITES right now is better implementation. CITES is a very complicated arrangement. It has a lot of complicated details. It has a lot of opportunities for smugglers and people who want to violate the law to exploit that system, and we need to get a lot better communication between the countries and a lot

better standards on enforcement. That is the next big hurdle for CITES. We have the infrastructure in place. Now we have to fine tune it and get the enforcement fine tuned.

Miss SCHNEIDER. OK. I thank you for that comprehensive response.

One last minor detail: back in 1978 the Pelly amendment to the Fishermen's Protective Act enabled the United States to embargo wildlife products from certain countries, and I understand that the Fish and Wildlife Service has not written any regulations yet to utilize the Pelly amendment to enforce CITES. Can you give me the status of the regulation writing?

Mr. LAMBERTSON. That's true. We have never actually prepared regulations. I'm not sure that we need regulations. That's something I'd have to talk to our lawyers about as to whether the Act would need specific procedural regulations to implement, or whether the certification under that Act could be done without regulations.

I am not prepared to answer that. I could provide that for the record.

Miss SCHNEIDER. Well, insofar as the bottom line, whether we need the regulations or don't need the regulations, do you find that enforcement is possible? Is it happening?

Mr. LAMBERTSON. Let me say that I was very pleased to see the amendment to the Pelly amendment to incorporate more than just fishery sanctions by adding general wildlife provisions. I think it is a very powerful tool. I think it should be reserved for extreme cases, and if and when that extreme case comes along, I would certainly support its use.

Miss SCHNEIDER. So even though we have it on the books, it has not been used yet. And if the time were to come for us to use it, are we really sure we would be able to without the regulations?

Mr. LAMBERTSON. Miss Schneider, I'd have to provide that for the record.

Miss SCHNEIDER. That would be useful.

[The information to be supplied follows:]

IMPLEMENTING THE PELLY AMENDMENT

In specific response to your question, the Interior Department does not believe that the Pelly Amendment, 22 U.S.C. § 1978 (1982), requires the adoption of implementing regulations before the Secretary can undertake the certification process or otherwise enforce the statute's provisions. The Department can proceed directly under the statutory procedures if the necessary finding under § 1978(a)(2) can be made. Although § 1978(g) specifically empowers the Secretary of the Interior to adopt any regulations deemed necessary to implement the Pelly Amendment, nothing in that paragraph mandates the adoption of procedural regulations as a prerequisite to using the certification process or otherwise enforcing the prohibitions in the statute.

Mr. LAMBERTSON. Let me say that there are two things that we would have to have before we could use the Pelly amendment. We would have to have a demonstration that a country has repeatedly violated international wildlife law, and we would have to have a sizeable wildlife trade from that country because the sanction would be an embargo wildlife products.

Consider a country like the United Arab Emirates.

Miss SCHNEIDER. Right.

Mr. LAMBERTSON. We have almost no wildlife trade with them, so if we impose the Pelly sanction on the United Arab Emirates, it would have absolutely no effect other than probably making them very unhappy with us.

Miss SCHNEIDER. What about Japan or Mexico?

Mr. LAMBERTSON. Japan and Mexico are two countries against which the Pelly sanction potentially might be applied, if we can demonstrate a level of continued violation of Federal law and international law.

Miss SCHNEIDER. Do we have enough data on those two countries now to do such a thing?

Mr. LAMBERTSON. I would be reluctant to say now that we do. There is a real question on Mexico. We are working with Mexico to get them into CITES and to make them a part of the international wildlife community. I'd be very reluctant at this point to impose that kind of a sanction. I think we should use the carrot first. We should encourage them to get into CITES and become a responsible international partner with CITES before we hit them over the head with the big club—and I consider the Pelly amendment to be the big club.

Miss SCHNEIDER. Well, to pick up on that comment, I think that that is certainly a good strategy that you have articulated for us to provide the incentive—the carrot and stick approach. But, once again, no one will pick up on our incentives. No one in the international community will follow us unless we are worthy of being followed, and I believe right now that we are not.

I feel that we have to really clean up our act and enforce the regulations that we do have on the books, and I think that any other specific tools that you need certainly you should approach the chairman and myself to see if there is something that we can do in terms of legislative clarification, or in terms of resources.

Just as I ran over for a vote, one of the things that came to mind is that I receive so many letters—as I know my colleagues do—from various animal advocate organizations, and it seems to me if manpower were one of your problems, then perhaps something comparable to the Peace Corp or a voluntary participation to help the inspection of some of these cargo ships and other such things might be worth considering, because I believe the voluntary sector is just looking for some way to make their contribution. And the number of people that I believe would be willing to participate in such a voluntary program would be significant. The manpower is out there, and perhaps we can think along those lines. I don't know. I'm just throwing that out.

Mr. LAMBERTSON. I know that is something that I'd certainly be glad to look at.

Let me just commit this to you: I am the new regional director in Boston. I started there about three weeks ago. The Port of New York imports approximately 50 percent of the wildlife products into this country. One of the highest items on my agenda is to personally visit that port with Mr. Bavin and the other people who are responsible for the operation of that port, to find out what the problems are, what needs to be corrected, if the regulations need to be changed, if we need more enforcement capability, and what our

needs are. I hope in a couple of weeks to be a lot better advised as to what specifically needs to be done.

Miss SCHNEIDER. I think that that is an excellent idea. And, as a matter of fact, I would like to volunteer to come along with you.

Mr. LAMBERTSON. You'd be most welcome. [Laughter.]

I would be glad to have you, Miss Schneider.

Miss SCHNEIDER. I think that we see members of Congress taking trips to Japan and other such places. I'll be happy to go to New York and see some wildlife.

Mr. LAMBERTSON. We'll take you to the port of Newark.

Miss SCHNEIDER. We'll scratch the record on that one. I didn't mean New York wildlife.

Mr. FOGLIETTA. Define wildlife in New York. [Laughter.]

Miss SCHNEIDER. But I think there there is interest among my colleagues, and I think that we could put together a delegation. It would be an educational process for us, and I think that it would be important to heighten the awareness of these members who do feel helpless, despite the fact there are not more members here in attendance today. Unfortunately, our schedule has gotten very complex, and so they couldn't be in attendance, but I assure you that there is congressional interest, and I'd be happy to organize such a joint trip.

Thank you, Mr. Chairman. No further questions.

Mr. FOGLIETTA. I thank you, Miss Schneider. And I thank the members of the panel, as well as the very informative staff person sitting behind them.

I'd like to invite the members of panel number two to the table: Mr. Mark Trexler, Ms. Ginette Hemley, Mr. Craig Van Note, Mr. John Gleiber, and Mr. Roger McManus.

Do any or all of you have preliminary statements that you would like to make, or do you just want us to go into questioning?

There is a statement by Ms. Hemley?

Ms. HEMLEY. Yes.

Mr. TREXLER. I think we probably all have statements.

Mr. FOGLIETTA. OK. Shall we call on Ms. Hemley first?

Ms. HEMLEY. OK.

Mr. FOGLIETTA. You were the first to raise your hand when I asked.

Ms. HEMLEY. OK.

STATEMENT OF GINETTE HEMLEY, DIRECTOR, TRAFFIC(U.S.A.), WORLD WILDLIFE FUND

Ms. HEMLEY. Mr. Chairman, I am pleased to have the opportunity to present the views of TRAFFIC(U.S.A.) on the status of U.S. implementation of CITES and the role the U.S. Government plays in controlling international trade of the world's endangered and threatened species.

I am Ginette Hemley, director of TRAFFIC(U.S.A.), the wildlife trade monitoring program of World Wildlife Fund. TRAFFIC(U.S.A.) is part of a global network of eleven offices that specialize in monitoring international trade of plants and animals and their products.

We work closely with the CITES Secretariat and the CITES member nations to evaluate the impact of trade on threatened species, to provide information to help improve implementation of CITES, and to pinpoint illegal trade problems. The TRAFFIC network is the only non-governmental organization devoted specifically to tracking the international trade of wildlife.

TRAFFIC(U.S.A.) applauds the interest of this subcommittee in reviewing just how the United States is implementing CITES. We see this review as critical, because it is the principal consumer markets of the world—the United States, the European Economic Community, and Japan—that together share the greatest responsibility for properly implementing CITES and minimizing the detrimental effect of trade on the world's endangered species. Without proper enforcement in the importing countries, CITES stands little chance of succeeding over the long run.

The United States has always played a leadership role in the convention. As we have heard today, the government has, through the Fish and Wildlife Service, helped shape policy development in CITES and has chaired a number of important committees and working groups. The United States does currently preside over CITES's most important policy-making body now, the Standing Committee. And although the United States has frequently failed to meet its funding obligations to CITES, we are pleased to hear the House Appropriations Committee and the Senate Appropriations Committees are recommending substantial increases in fiscal year 1989, which would help a lot.

Yet, while most CITES parties clearly look to the United States as a conservation leader, shortcomings within our relatively sophisticated control system for wildlife trade here in the United States preclude effective implementation of many CITES treaty provisions.

The likelihood that a shipment will enter or leave this country illegally remains high because of weaknesses within the system. The sheer volume of trade and the limited manpower that we have heard about today is certainly a major impediment, but we have found, through our routine trade monitoring activities, that other problems in the day-to-day workings of the agencies involved in wildlife trade control also contribute to ineffective implementation of CITES.

As a result of recent discussions we have held with Fish and Wildlife over a number of these issues, we are now beginning a formal review of U.S. implementation of CITES. We hope to develop, as needed, concrete recommendations for improving the government's effectiveness at enforcing wildlife trade controls across a broad spectrum.

This effort will, in fact, complement a similar project recently undertaken in the EEC—an effort that was prompted largely by U.S. Government criticism of the communities' own CITES controls.

That project has already resulted in a number of important improvements in CITES implementation in several EEC member states.

It is time now, we believe—and as I think this subcommittee believes—to take a careful look at our own wildlife trade control system.

At this point, Mr. Chairman, our comments will be necessarily brief as the study will not be completed until next April. But I would like to outline a few of the trade control problems that have lead us to undertake this study.

Our trade analyses lead us to believe that CITES enforcement is seriously hampered by the division of trade control responsibilities among different agencies lacking any clear coordinating mechanism.

A TRAFFIC study carried out in 1985, for example, concluded that the psittacine—or parrot—importation process in the United States—which is jointly overseen by Fish and Wildlife and APHIS—is fraught with procedural and administrative inadequacies that provide loopholes through which trade controls can be avoided. We believe these loopholes are allowing the illegal import of numerous threatened species of parrots.

Although our study made a number of recommendations on improvements and it was submitted to both APHIS and Fish and Wildlife, we have yet to see any evidence to suggest the situation has changed.

The problem of lack of coordination between Fish and Wildlife and APHIS is even more evident in the plant trade. The failure of both agencies to investigate the validity of plant documents apparently continues to allow the import of thousands of wild orchids, succulents, and other CITES-listed plant species under the label of "artificially propagated" specimens.

We have also found that communication between the U.S. Government and other CITES authorities is often inadequate to ensure proper enforcement of CITES, as well as other statutes such as the Lacey Act.

The example that was pointed out by Representative Schneider earlier on the coral trade I think highlights this. In spite of a long-standing ban on the export of coral from the Philippines, the United States has continued to accept literally tons of coral from that country.

In September of 1987 we learned that this ban was fully in force. In fact, we received copies of the relevant laws from the Philippine Government within a week of our requesting them. This was passed on to Fish and Wildlife; however, we have looked at the statistics, and according to Customs over 300 tons of coral has entered the United States in the six-month period that extended through March of 1988. It is unclear to us why these shipments go unchecked.

It is important to point out that while the statutes in the Endangered Species Act, the Lacey Act, and the Marine Mammal Protection Act, which are the basis for wildlife trade control here, do give the United States broad authority to control the import and export of most wildlife.

However, the U.S. regulations that implement CITES are seriously deficient. The existing CITES regulations are more than ten years old, and do not incorporate any of the resolutions adopted by the parties since 1979. Many of these have not been implemented

by the United States at all. In some cases this has lead to serious trade problems.

The failure of the United States to implement the CITES ivory quota system adopted by the parties in 1985 allowed for the import in 1987 of over 600 elephant tusks from Zaire under apparent fraudulent permits. These tusks, which are valued at about half a million dollars, were apparently exported outside of the quota established by Zaire.

We are pleased that Fish and Wildlife is now investigating some of these shipments, although it seems this investigation could have been avoided perhaps if the United States had adopted the quota system.

The U.S. Government has also generally failed to adopt CITES amendments within the 90-day period that is required by the treaty, which has, in some cases, allowed trade in newly designated appendix I endangered species to go temporarily unchecked.

Over the last six years, the United States officially adopted these changes at least two months later than the date required under the convention. In 1985, this delay apparently allowed for the import of at least 28 Appendix I or endangered Scarlet Macaws in eight separate shipments that should have been subject to review by the U.S. scientific authority.

Because the CITES amendments had not been published as regulation, Fish and Wildlife took the position that there was no legal basis for stopping these.

There is little doubt, I think, that Fish and Wildlife inspection efforts suffer from limited staff—57 trained inspectors to oversee more than 80,000 shipments entering and leaving the United States annually. It is easy to see why there is very little physical inspection of the shipments.

But I think it is also important to point out that under current policy, much of an inspector's time is spent entering data into the law enforcement computer system rather than inspecting shipments. While there is little question that computerization of this data is important for trade monitoring, it is a task that we think should be delegated to clerical staff.

The wildlife inspector's job is further encumbered by the lack of direct or timely access to CITES notifications and other international communications which are issued to assist with enforcement.

Directives from Washington to the ports must generally, under current policy, go through the regional offices of Fish and Wildlife Service—a process that can impede efficient enforcement.

In some cases, directives of potentially illegal shipments are lacking all together. For example, the U.S. Government continues to accept shipments of caiman skin products of apparently illegal origin, in spite of well-documented information on the legal status of that species.

From 1984 to 1986 more than $20 million worth of products made from potentially illegal caiman from Colombia were imported into the United States from Italy, although Colombia has banned most caiman exports since 1974.

After discussions with the Colombian management authority earlier this year, TRAFFIC urged Fish and Wildlife to contact the Italian authorities to verify the legality of these products. To the best

of our knowledge, Fish and Wildlife has yet to follow up, and Colombian caiman-skin products continue to pour into the United States through Italy.

We are pleased to see that over the last two years Fish and Wildlife Service has greatly improved its procedures from compiling the U.S. annual report required by the convention. The reports are more complete than in previous years, and have been submitted to the Secretariat in a more timely manner.

These changes are critical, we believe, because the sheer volume of U.S. trade makes this country's report really key to any analysis of worldwide trade trends.

However, it is important to point out that the data reporting is still not consistent for both plants and animals. A number of CITES plant transactions are listed only to the family or genus level. And, in addition, while the law enforcement computer system contains the names of importers and exporters of animals and animal products, that same type of information is lacking for plants, although I think it is available on the documents. These data could be, obviously, of great use to law enforcement activities.

Mr. Chairman, the points that I have mentioned here only touch on some of the key issues we intend to cover in our evaluation of U.S. implementation of CITES. We hope to develop constructive recommendations on how the government can improve its trade control efforts, and we will certainly keep you apprised of this study and look forward to sharing its results with you in a few months.

[The prepared statement of Ms. Hemley can be found at end of hearing.]

Mr. FOGLIETTA. We thank you, Ms. Hemley, for an excellent statement and some excellent recommendations.

Mr. Trexler?

STATEMENT OF MARK TREXLER, ASSOCIATE, WORLD RESOURCES INSTITUTE

Mr. TREXLER. Thank you, Mr. Chairman.

I appreciate the opportunity to appear before you today on the subject of the implementation of CITES. I am Mark Trexler of the World Resources Institute. Today, however, I am appearing on my own behalf as a doctoral candidate at the University of California at Berkeley's Graduate School of Public Policy, and on behalf of my colleague, Laura Kosloff. Ms. Kosloff is a staff attorney for the Environmental Law Institute—also a non-partisan legal research center located here in Washington. We have both spent several years studying the development and implementation of CITES.

CITES is often characterized as one of the most successful international environmental treaties. Counting almost 100 countries as Parties, it has, indeed, been a tremendous political and symbolic success.

Many questions can be raised, however, regarding what CITES is actually accomplishing for wildlife. We applaud the interest of the subcommittee in investigating this question.

In approaching the issue, it is important to understand the context within which CITES functions. Even though it addresses just a

very small part of the species extinction problem, it faces a task of staggering proportions. Thousands of species, each with their own subspecies and ranges, are traded internationally. Hundreds of government agencies issue CITES paperwork around the world, and wildlife legislation often varies in each country. Trading patterns are complex and can change rapidly.

It can take the wisdom of Solomon to keep the trade's paper trail straight, but CITES is charged with just this task. Given the trade's inherent complexity and the number of parties often involved in a single transaction, it is not surprising that CITES violations can be difficult to prove. Moreover, the priority assigned to CITES enforcement by Party states is often quite low.

Even basic implementation of CITES can, therefore, pose major challenges. Indeed, there is no reliable evidence that CITES, to date, has significantly benefitted the biological status of any species whose trade it proposes to control. This is due both to the complexity of the topic, which makes regulation extremely difficult, and to the fact that it is all too easy for implementation efforts to focus on controlling the trade, per se, rather than necessarily on benefitting species.

Any discussion of CITES must remember that the ultimate goal of the treaty is to benefit species threatened by the international wildlife trade.

Notwithstanding CITES many problems, it is one of very few international legal instruments available to combat the global problem of species extinctions. We must, therefore, focus on making it as biologically effective as possible.

Unfortunately, we know very little about how CITES is being implemented by Party states, much less about its actual biological effectiveness. This ignorance extends even to the United States, notwithstanding its perceived status as the Party that best complies with CITES obligations.

Admittedly, no other country has the wildlife inspector network, the limited ports of entry for wildlife products, and the comprehensive enforcement infrastructure and legal sanctions found in the United States.

But how much of the wildlife trade mimics the drug trade in bypassing our customs services all together? Containerized cargo shipments are probably a gaping hole in our enforcement efforts. Meanwhile, the Customs Service is aggravating the problem by cutting back on its random inspections of imports.

Declared wildlife shipments raise questions, as well. Are the inspection and enforcement processes concentrating on the appropriate species? Is the domestic enforcement of CITES sufficient to serve the intended deterrent effect? How much of the legal trade entering the United States violates the intent of CITES? And how much of the illegal trade is biologically harmless?

These questions remain largely without answers. We encourage you to support the World Wildlife Fund's plans to launch a major study of U.S. CITES implementation which will attempt to look both at its effectiveness and how it can be improved.

Congress and the Fish and Wildlife Service, however, need not wait for the results of this study to take some action. Steps should

immediately be taken to improve morale at the wildlife inspector level.

These inspectors, who make up the backbone of U.S. implementation efforts, are poorly paid, are provided with few opportunities for advancement within the service, and are given virtually no opportunity to participate in the formulation of CITES policy.

Even simply publishing a newsletter for the inspectors and including inspectors in U.S. CITES delegations would boost inspector morale and motivation.

The decentralization of Fish and Wildlife operations is also of serious concern to us. The inspectors and agents at ports of entry are now under the control of the Service's regional offices, whose priorities will rarely include CITES.

Not surprisingly, staff at the ports often feel powerless to get the political and financial support needed to do their jobs, while the Service's law enforcement division here in Washington is frustrated in its attempts to coordinate and direct field enforcement activities.

We strongly encourage the subcommittee to investigate how the Service can organizationally be made more conducive to effective CITES implementation.

These are just two of the many substantive domestic implementation issues that could be raised. We'd like to emphasize, however, that improving United States implementation should not be equated with simply cracking down on wildlife traders. CITES regulation, with its emphasis on proper paperwork, is already susceptible to regulatory unreasonableness. With hundreds of government agencies producing paperwork, many permits will inevitably be deficient in some way. Regardless of a trader's good faith, and irrespective of the absence of biological detriment, a shipment's paperwork may arrive in the United States with an incorrect date, an inappropriately whited-out entry, or some other irregularity. In the absence of increased resources and better guidance to enforcement staff, a directive from you to crack down on the wildlife trade will focus on just such shipments. It is much easier to find obvious—but often relatively harmless—permit irregularities than it is to identify and stop those shipments that might actually be detrimental.

Simply cracking down also threatens the cooperation of legitimate traders whose voluntary compliance is crucial to successful CITES implementation. Moreover, increasing the attention or resources devoted to U.S. CITES implementation is not enough when world-wide implementation is so poor.

While well-focused domestic implementation initiatives are needed, what we also need to do is to reassert U.S. leadership in formulating and implementing CITES policy internationally.

This leadership is needed on a series of fronts. For example, the CITES budget is insufficient to cover even minimal biological research and promotion of treaty implementation.

The United States, among others, has aggravated CITES budgetary problems with the timing and size of recent contributions. One result is that the available time and expertise is diluted by the need for extensive fund-raising and budgetary posturing at Conferences of the Parties.

Second, the recent departure of two key members of the Secretariat's staff suggests that the often-discussed problem of Secretariat direction may be worsening. The United States must take a more meaningful role in monitoring the activities and performance of the Secretariat, and must work with UNEP to keep it on track.

Third, the CITES appendices continue to grow alarmingly. Trade in between 24,000 and 40,000 species is, in theory, now regulated under CITES. Yet, trade controls can probably realistically help less than 100 species of fauna and 200 species of flora.

Appendix inflation results from the politicization of the listing process for which both government and NGO's are to blame, and results in scientific information not being used, even when it is available.

Appendix growth has serious implications. A great deal of the policy time devoted to CITES by all concerned focuses on Appendix amendment proposals. This is counter-productive when implementation for the treaty for species already listed is as poor as it is.

But, most importantly, CITES enforcement is compromised by appendix growth. The work load of permitting agencies has increased, and enforcement officials, such as U.S. wildlife inspectors, face a less and less tenable task. Indeed, Fish and Wildlife must develop mechanisms by which they focus effort on those species most likely to be benefitted through effective implementation of CITES controls. Needless to say, appendix growth makes it harder and harder to do so.

Fourth, the issuance of a CITES permit is supposed to certify that a shipment will not be detrimental to the survival of the species in the wild. However, lack of resources and biological information means that few legitimate no-detriment findings precede the issuance of export permits.

Exporting countries ask why they should improve when importing countries so readily accept questionable shipments. Importing countries argue that they cannot be expected to fill the gap created by the failure of exporting countries to regulate out-going trade.

Both of these arguments have merit, but CITES gets caught in the middle. Rather than tackling these problems, the Parties are making the convention more and more difficult to implement by prescribing increasingly complex monitoring and enforcement procedures.

For the treaty to make biological progress, the United States must take a leadership role in restoring the Convention's scientific integrity and streamlining its procedures. Failure to address these and other CITES issues at the international level compromises the effectiveness of domestic implementation efforts.

Mr. Chairman and members of the subcommittee, as current chair of the CITES Standing Committee, the United States is in an ideal position to pursue progress on these and other fronts. It is the United States' responsibility, as one of the primary authors of CITES, to try to bring the treaty back on course. Improving the infrastructure and capabilities underlying United States implementation of the convention can contribute to this goal.

Thank you.

[The prepared statement of Mr. Trexler can be found at end of hearing.]

Mr. FOGLIETTA. Thank you, Mr. Trexler.
Mr. Gleiber.

STATEMENT OF JOHN GLEIBER, ANIMAL WELFARE INSTITUTE

Mr. GLEIBER. Thank you, Mr. Chairman and Miss Schneider. I am especially grateful for the opportunity to read this statement because it represents the views primarily of Christine Stevens, who scheduled her European trip especially in order to be back here for this very important oversight meeting, and she is quite sorely disappointed not to be here. And I feel that you have come to hear a great violinist, and you're being fobbed off with a penny flutist.

The Society for Animal Protective Legislation goes back to the original convening in 1973. A spirit of hope and confidence that the work would succeed in preventing further extinctions prevailed at that time.

Throughout the world, CITES is referred to as "The Washington Convention" because of that splendid initial meeting which set it off with such optimism. At subsequent meetings, many valuable decisions were taken, readily adopted by men and women of good will looking forward to a future in which nations would assist one another to maintain healthy populations of wildlife everywhere.

For example, at the important Berne meeting where the "Berne criteria" for listing species were adopted, the parties agreed that the commercial sale of wild caught species for the pet trade should be phased out. That wise decision has not been honored. On the contrary, this trade has greatly increased.

When the Berne resolution to phase out wild caught pets in support of greater protection for psittacine birds was used to support a proposal, the chief lobbyist for the Pet Industry Joint Advisory Council spoke scornfully of the decision. Thus, the greedy drain on native populations continues unhindered by needed CITES regulations.

When national laws prohibit their export, the international pet trade turns to bribing, poaching, and smuggling, as exemplified by the recent incident in which Ghanaian authorities apprehended an agent from Exotic Fauna of Los Angeles. He had already boarded the plane on which the 2,000 African grey parrots he had acquired were being loaded, when an alert observer summoned law enforcement agents, for Ghana prohibits export of these birds.

I have a copy of the People's Daily Graphic article attached which gives additional details on this incident.

Vested interests that profit from exploitation of wildlife have grown very bold in recent years. At the CITES meeting last July in Ottawa, national delegates were surprised to find in their document boxes a lengthy diatribe against a large number of sound conservation proposals on which votes would be taken during the two-week meeting. The paper had a red cover, but no signature or other indication of the source of this uniformly bad advice.

After questions in plenary as to who they were, they issued the following list—and I won't read it, but there were 17 organizations involved, almost all of commercial import—and this group actually expressed great indignation over the CITES report on infractions.

They accused the Secretariat of being "overzealous." I think that is a very interesting comment. They accused the Secretariat of being overzealous.

Non-governmental organizations that stand for the animals and plants that are under heavy pressure from trade are in danger of being overwhelmed by the consumptive commercial interests who would like to run CITES for their own ends.

Proposals which would have crippled the capabilities of humanitarian and conservation NGO's were vigorously advocated by the Secretary General each time he visited the United States prior to the 1987 meeting of the parties.

Fortunately, the determined opposition we all expressed prevented disastrous changes in the rules of the meeting. We also came out with flying colors from a GAO investigation of allegations of undue influence was being exerted by NGO's dedicated to animal protection.

We'll continue to fight whenever it is necessary to keep CITES from becoming a mere puppet for exploitative interests. These oversight hearings are important—no, they're more than important—they are invaluable in establishing the concern of Congress that CITES follow the goals for which it was created.

One of these goals, expressed repeatedly in the text of the convention, is prevention of injury, damage to health, and cruel treatment of living mammals, birds, and other animals. I would submit for the use of this subcommittee a copy of an illustrated report by that name prepared by the Environmental Investigation Agency and its subsequent report on the trade in live wildlife, focusing on the approximately 20 million wild birds captured for the pet trade each year in Senegal, alone.

Half of these beautiful, delicate creatures die even before they have been loaded on planes to Europe, Japan, and the United States. Clearly the intent of CITES is being grossly violated, yet massive lobbying by PIJAC and its allies opposes, as mentioned earlier, even the most modest proposals for reducing these death tolls.

To turn to another issue of major importance which must be addressed at the meeting, commercial ivory traders have made a mockery of CITES' inept stab at regulation. The United States Government, which heads the CITES Steering Committee, hasn't even managed to get together a delegation to visit the United Arab Emirates, which is brazenly flouting all attempts by African nations to prevent poaching of their elephants and smuggling of the ivory.

On the floor of the plenary session, Clark Bavin, who you heard earlier today, supported Kenya and Tanzania and said:

> We must work together to save the African elephant so that it does not become endangered or, even worse, extinct. Traders are stealing from the African people. The United States will initiate diplomatic discussion with United Arab Emirates. We are prepared to use economic and political means.

But these brave words have not been carried through by Mr. Bavin's superiors. The CITES resolution remains words without action.

The world's biggest consumer of ivory is Japan, a nation whose laissez-faire attitude on whales has earned it a world-wide reputa-

tion for disregarding scientific opinion except when it has paid for the "research." Its habit of taking reservations extends to a number of species listed by CITES which Japanese producers of luxury items continue to sell.

I urge this subcommittee to send a strong message to the Departments of Interior and State to end their delay and meek acceptance of the CITES Secretariat's chronic failure to halt illegal trade in ivory.

As the head of the delegation from Zaire summed it up: "Traffickers were favored and parties were penalized." With declines in the range of 90 percent documented in East Africa, we cannot afford to wait longer.

I would submit two important articles by the leading student of elephants, Iain Douglas-Hamilton, the first from ORYX, the second from SWARA—a periodical published in Africa. They give some of these appalling statistics.

But the serious commitment to protection of elephants which the United States and other nations must make if the disastrous trend of the last ten years in East Africa is to be halted, has not even begun. Our country should take a leadership role.

Others will report on the sorry state of the CITES Secretariat. The careful selection of staff dedicated to the prevention of the decimation of elephants and other threatened and endangered species is essential. The help of this distinguished subcommittee in bringing this about would be extremely valuable.

The future of the Convention and the species it was created to protect are at stake.

Thank you very much.

[The prepared statement of Christine Stevens can be found at end of hearing.]

Mr. FOGLIETTA. I thank you, Mr. Gleiber.

Mr. McManus and Mr. Van Note, another subcommittee is going to have to be using this room in a short period of time—about 1:00.

I would ask, if it is possible, for you to summarize your statements, and then we can get on with some questioning.

STATEMENT OF ROGER McMANUS, PRESIDENT, CENTER FOR ENVIRONMENTAL EDUCATION

Mr. MCMANUS. Thank you, Mr. Chairman. I would be pleased to try to shorten my comments to accommodate the situation.

My name is Roger McManus. I am president for the Center for Environmental Education, a private organization of 110,000 members world-wide devoted to the conservation of marine wildlife and their habitats.

I am also chairman of the Trade Specialist Group of the Species Survival Commission of the International Union for the Conservation of Nature and Natural Resources—the IUCN—which is the world's largest conservation consortium of governments, government agencies, and non-governmental organizations.

The Trade Specialist Group's purpose primarily is to provide biological advice through the IUCN on the biological status of species subject to CITES controls.

While I'm going to try and summarize my remarks quickly, I can't let this moment go without helping to confirm Miss Schneider's earlier remarks by noting that my associate, Amie Brautigan, is the brains and the brawn behind the TSG I chair, and that in her job she helps coordinate approximately 2,000 scientists associated with the union to provide that expert advise to the CITES parties.

Fundamental to the workings of CITES is the provision that export of a given species only be approved by a CITES management authority—a party management authority—once its scientific authority has determined that the export in question will not be detrimental to the species' wild population.

My remarks pretty much mirror those of Mr. Trexler concerning the fact that a major problem with CITES is that the scientific findings and the scientific studies that need to be made are not being made.

While it is all very good to control the trade in these species, unless we back up trade findings and trade controls with accurate knowledge of the specie status, these controls in and of themselves may not be very meaningful.

Part of our concern can be reflected in the fact that 30 percent of the current CITES parties have yet to officially designate a scientific authority which is designated by the treaty to make the decisions that are needed for granting permits or to carry out the research that is needed to ensure that the species can withstand the trade that they are subject to.

Recently a study conducted by the IUCN's conservation monitoring center indicates that some two-thirds of the 150 wildlife species listed on CITES appendix II, and, therefore, allowed in commercial trade, are either being traded at levels their populations probably cannot sustain, or too little known for any assessment to be made of the trade's impact on their wild populations.

What we're finding is that much of the species trade that is ongoing is either being allowed without the findings that are needed to ensure the biological status of the species is being considered in the trade, or there are no studies to assess what that status is to make any kind of reasonable decision.

In this light we believe that the United States could take and should take more unilateral actions to ensure that trade is being conducted under the standards of the treaty.

As the world's largest wildlife consumer, the United States could effectively reduce the pressure trade may be exerting on certain wildlife populations by curtailing imports.

Our importance in the importing market assures us of considerable leverage in negotiations with other countries as to measures they should adopt to improve wildlife trade controls.

An example that might be cited is the case of Singapore, where we have prohibited trade out of that country, and that country has taken steps to join CITES, and also to improve its control on wildlife trade to the United States and elsewhere.

There are many other cases of countries that are involved in trade that is not in compliance with CITES or are not members of CITES where the United States could step in and help move things along. Haiti is an example.

90-434 0 - 89 - 2

In 1985 a country environmental profile of Haiti funded by the U.S. Agency for International Development recommended that immediate measures be taken to assess the impact of Haiti's wildlife trade and bring it under control.

It further recommended that the country's trade in wild orchids, tree ferns, and such threatened and endangered species as sea turtles, certain corals, aquarium fish, and reptiles be stopped. Yet we are still importing large numbers of wildlife from this CITES non-party, and this CITES non-party continues to trade with other CITES parties, such as Japan, exporting, for example, large quantities of shells from the endangered Hawksbill Sea Turtle.

Another case that I'd like to mention briefly is Pacific Fruit Bats—a little-known trade in these animals as a food item. Nine species of fruit bats—or "flying foxes" as they are also known—inhabit the islands of the U.S. Pacific Trust Territory. All of these species are classified by IUCN as possible extinct, endangered, rare, vulnerable, or threatened, and they are subject to a lot of threats, including habitat destruction, but also international trade as food items.

They are considered a delicacy by peoples of Guam and the Commonwealth of the Northern Marianas, both under U.S. trade jurisdiction. But the U.S. Government, even though these fruit bats are listed on CITES, has taken little action to control the trade of these animals coming in to these islands. This is causing a great pressure on harvest and trade of these animals, and could be a major cause of their final extirpation if steps are not taken soon.

In all of the instances above I mentioned, and others, the U.S. plays a major role in a trade that appears to be causing a conservation problem. But our government is reluctant to step in and take the steps that it could take to stop that trade until the country involved either joins CITES if it is not a party, or starts to enforce CITES as the parties have deemed necessary.

Much of this effort would have to focus on ensuring the scientific credibility of the treaty. I would again emphasize previous testimony which suggested that while we should spend a lot of time and effort—and perhaps more time and effort than we are spending now, indeed—on inspecting shipments, prosecuting violators, and so forth, we also, to make the treaty truly meaningful, must ensure that the controls that we are implementing are going to benefit the species that are threatened by the trade.

Thank you.

[The prepared statement of Mr. McManus can be found at end of hearing.]

Mr. FOGLIETTA. I thank you, Mr. McManus.

Mr. Van Note.

STATEMENT OF CRAIG VAN NOTE, EXECUTIVE VICE PRESIDENT, MONITOR CONSORTIUM

Mr. VAN NOTE. My name is Craig Van Note. I am executive vice president of Monitor, which is a consortium of conservation, environmental, and animal welfare organizations. I am speaking on behalf of the 14 groups listed in my testimony, and, additionally,

the Massachusetts Society for the Prevention of Cruelty to Animals.

We greatly appreciate your interest, Mr. Foglietta and Miss Schneider, in this most urgent issue, the oversight of CITES and its enforcement by the United States Government. Your continuing oversight is absolutely crucial if CITES is to become effective.

In my written testimony I address the failure of the institutions and the laws to control the international trade in endangered and threatened species.

CITES and the Fish and Wildlife Service have largely failed because they are under-funded, under-staffed, and poorly managed. But non-enforcement by the Fish and Wildlife Service is a major factor.

The huge ivory trade is a good example of the failure of the CITES system. The Fish and Wildlife Service is aiding and abetting the smugglers and traders of Burundi, Hong Kong and other countries by accepting any or all ivory import documents on their face.

For years the Fish and Wildlife Service has allowed shipments of ivory listing Burundi as country of origin, despite the fact that Burundi has had no elephants in the wild for more than a decade.

Last July, for example, three shipments of more than 250 ivory door knockers, jewelry, and carvings from Hong Kong were allowed in without incident, despite declarations that the ivory originated in Burundi, or unknown via Burundi, or unknown place via Burundi. Other shipments last year came in stating country of origin as unknown, or Africa, or China, or India.

Last June 22 the Fisheries and Wildlife Subcommittee had a hearing on the plight of the African elephant, and Mr. Lambertson stated at that time:

> Export permits must accompany shipments leaving African range states. These permits are based on findings of scientific authorities in range states that export will not be detrimental to the survival of the species.

But there are no elephants in Burundi, so I suppose that Mr. Lambertson will argue that because there are no elephants in Burundi the shipments are, therefore, not detrimental.

We must seriously ask if the Fish and Wildlife Service has ever rejected a shipment of elephant ivory. If it has, what made that shipment any different than the dozens of shipments identified as improper by conservationists in the last decade?

The Fish and Wildlife Service has not been enforcing CITES ivory regulations, nor its own special rule on elephant ivory of 1978, nor its 1982 regulations.

At last month's hearing, Mr. Lambertson opposed any new U.S. legislation to crack down on the flood of poached ivory. Give CITES more time, he said. That is precisely what the Fish and Wildlife Service said in hearings before this committee in 1977 and 1979. More than a million elephants have died at the poachers' hands since then.

Mr. Lambertson concluded his testimony last month with the assurance that "The Service will continue to keep a close eye both on the trade and the biological status of the elephant in the wild." For a decade, the Fish and Wildlife Service and Mr. Lambertson have

trained a blind eye toward the collapse of the African elephant population.

If the Interior Department was truly monitoring the biological status of the elephant, it would find that without a doubt the species is declining sharply across the majority of its range. The Fish and Wildlife Service would then list the African elephant as endangered under the U.S. law and ban commerce in its ivory.

The failure of the CITES ivory quota system is most visible in the massive traffic in poached ivory flowing through South Africa, a CITES member nation.

Tens of thousands of tusks poached in Angola, Zambia, Mozambique, and other central and southern African nations are smuggled through South Africa each year.

The CITES system, which is supposed to monitor ivory, has failed to record any of this huge illegal trade. The contraband is protected by the highest levels of the South African government and military.

The long war in Angola, supported by South Africa, has been partially financed with ivory poached from the once-huge elephant populations of Angola by the rebel forces of Jonas Savimbi. More than 100,000 elephants have been killed in Angola in the past 12 years, according to the best estimates.

The rebels in Mozambique, also supported by South Africa, have been massacring the once-great elephant population there. Much of that ivory is flowing out through South Africa.

Much of the South African horde of ivory is then being transported overseas to Taiwan, to China, to India, and to other countries, without any documentation or CITES approval.

Earlier Miss Schneider raised the issue of the Pelly amendment for wildlife. In 1980, 17 Members of Congress wrote a letter to Secretary of Interior Andrus requesting that he implement this law, and to certify the nations of the world that are diminishing the effectiveness of international agreements on wildlife conservation.

The Interior Department has absolutely refused, despite annual appeals from conservation groups, to implement this statute. In fact, in 1979 the Congress passed an amendment specifically directing the Interior Department to carry out the 1978 amendment. As you have heard today, they have failed abjectly.

The sanctions under this amendment are discretionary, not mandatory, so Mr. Lambertson's concern about it being too heavy-handed is not valid. The President is empowered to embargo any or all wildlife products if he deems it necessary. But by identifying each country that is violating CITES regulations, this would be sanction in itself and would bring increased pressure on these countries.

Mexico was raised as a good example, and Mr. Lambertson stated that it was not a good idea to lean on Mexico at this time. I would remind you that Mexico has refused for more than ten years to join CITES, and has even refused to adopt CITES-equivalent regulations.

We have had a tremendous success with another Pelly amendment, this dealing with fisheries, where the Commerce Department has specifically certified a number of countries——

Mr. FOGLIETTA. I hate to interrupt you, but we do have a vote. We're going over to vote, and we will be back in about 15 minutes.

Mr. VAN NOTE. OK.

[Recess.]

Mr. FOGLIETTA. The committee will come to order.

Mr. Van Note, would you proceed with your statement?

Mr. VAN NOTE. Yes. I'll conclude very briefly.

I was describing the Pelly amendment's effectiveness on the whaling issue. There is a Pelly amendment that deals with fisheries, and the Commerce Department has applied that vigorously to countries that undermine the International Whaling Commission. By using the threat of sanctions, the United States has been able to reduce the number of whales killed over the last 15 years from over 50,000 a year to less than 500 this year.

If the Interior Department would take the same initiative, I feel confident that we could persuade Mexico, Japan, and other countries to begin abiding by all CITES regulations.

Finally, I want to refer to the drug trade, because we cannot avoid making an analogy between the trade in poached wildlife and the international narcotics trade. Both are huge, multi-billion-dollar industries with similar profit margins. Both thrive on corruption, loopholes, and lax enforcement. Both are out of control.

If we cannot stop the illegal trade in endangered and threatened species of wildlife, how can we hope to halt the flood of cocaine and heroin? In fact, the same cast of criminals is increasingly engaged in both wildlife and drug smuggling. They use the same routes to move their contraband, bribe the same governments, take advantage of the same weaknesses in enforcement.

When a ship or airplane arrives in the United States from Colombia or Bolivia, Federal agents don't automatically assume that everyone is honest and that the documentation on goods being imported is accurate. If they did, the drug smugglers would prosper even more. No, they are rightly suspicious, and they engage in rigorous checking to determine if illegal substances are being smuggled.

Why can't the Fish and Wildlife Service, and other Federal agencies, give half as much effort to examining the validity of the hundreds of millions of dollars of wildlife pouring into this country each year?

Thank you very much.

[The prepared statement of Mr. Van Note can be found at end of hearing.]

Mr. FOGLIETTA. I thank you, Mr. Van Note.

I would like, at this point, to ask unanimous consent that statements from Congresswoman Bentley, Faith Campbell of NRDC, and Geza Teleki of the Jane Goodall Institute be allowed to submit their statements for the record.

Without any objection, so ordered.

[The prepared statements of Mrs. Bentley, Ms. Campbell, and Mr. Teleki, can be found at end of hearing.]

Mr. FOGLIETTA. I have a general question for any and all members of the panel. You may answer, or you may comment on it. Given the current budgetary constraints that we now live with, what is the most significant action that the United States—the one

or two most significant actions that the United States could take at this time to improve its implementation of CITES?

We can start with Ms. Hemley again in the order of the statements.

Ms. HEMLEY. Well I think, Mr. Chairman, for the implementation of CITES in the United States there are a number of things that need to be addressed—as I pointed out in my statement—internally.

The inspection program in the Fish and Wildlife Service simply is not given the priority that it should be, and I think that, alone, is the reason why we are still having so many problems, and I hope that through this study that we are launching just now we can come up with some recommendations specifically on how, internally, that can be improved.

Mr. FOGLIETTA. I thank you very much.

Is there any comment on that, or any different opinions?

Mr. McManus.

Mr. MCMANUS. I certainly don't disagree. I was going to add that certainly budget restraints are a critical problem in a situation like this. And, of course, there are always two answers to that: do more with what you have, and get more money.

With regard to the former, I think there is only so much you can ask of civil servants such as we have heard today with regard to, for example, the problems that port inspectors have.

I would say a major concern to myself—and one thing that might assist CITES implementation in the United States, both with Fish and Wildlife Service and with APHIS—is to ensure coordination and line authority for the individuals and the agencies for implementing this treaty.

What we have, for example, in the service is a lot of folks being administered by a lot of different folks that have nothing to do with the treaty and whose agendas and priorities—for reasons that are understandable—may not be for the treaty implementation.

So the first thing that could be done with existing resources is make sure that the services that are responsible for implementing this treaty have the individuals involved with enforcement together as an integral unit and are not spread out between the regions and Washington, and so forth and so on, with a number of different bosses with different agendas.

The second item, of course, is to look for different sources of funds. We have heard that this is a billion dollar industry, give or take a few million here or there.

Clearly the resources that this industry has for internationally trafficking in wildlife should be tapped for controlling that trade, and I think that is a justifiable cost of business for them, and the Congress could certainly look at mechanisms for increasing revenues from the traffickers so that those revenues—and those revenues should be ear-marked back to the services for implementation—could be used for enforcing the treaty.

They are the ones that are causing the problem. Let them help pay for it.

Mr. FOGLIETTA. I thank you, Mr. McManus.

Anyone else on the panel want to comment?

Mr. TREXLER. Mr. Chairman, I'd point out two things: one is the organizational issue that has already been alluded to; and the other, I think, is the targeting. There are so many species covered by CITES that the inspectors have to be given official guidance on how to target those species that might actually be helped by the trade controls. Right now there are so many, and the panorama is so huge, that it is virtually impossible for them to do that, and they need guidance on that.

Mr. FOGLIETTA. Thank you.

Mr. Gleiber.

Mr. GLEIBER. I would like to address a point which Miss Schneider alluded to several times in her very astute and penetrating comments today.

I think that really the most important thing is the rededication of our agencies to their leadership role in this entire area.

I think that the world has always looked to this country as an example of what can be done and what should be done, and I would like to see this entire approach emphasized more strongly.

Mr. FOGLIETTA. Thank you, Mr. Gleiber.

Mr. Van Note?

Mr. VAN NOTE. As I raised in my testimony, the United States could exert very strong leadership in the world by becoming an enforcer of CITES regulations by certifying countries that are diminishing the effectiveness of the convention under the Pelly amendment. This would be a very easy thing for them to do. These countries are already identified. It is just an administrative procedure to carry out this certification.

Mr. FOGLIETTA. Thank you. And thank you, members of the panel.

Miss Schneider.

Miss SCHNEIDER. I'd like to pick up on all the questions that you asked, Mr. Chairman.

Mr. Trexler, you're suggesting that the spectrum is far too broad to be able to really implement or to enforce the regulations that we have on the books. What is implied in that statement is that priorities need to be set. Is that correct?

Mr. TREXLER. Priorities need to be set, and as a legal matter I think you need to keep trying to constrain future growth of the list.

At every CITES meeting hundreds and hundreds of species are added to the appendices, which means that in theory our inspectors have to go out and control the paperwork on all the shipments after that, when almost everyone admits that most of the species being added right now are not conceivably threatened by the trade. There are some exceptions—plants, for example.

Miss SCHNEIDER. Well then why are they being added?

Mr. TREXLER. Why are they being added?

Miss SCHNEIDER. Yes, if they are not even threatened?

Mr. TREXLER. Well, a range state, for instance, or non-governmental organization takes on a cause of getting a couple hundred poison arrow frogs listed on the appendices, and simply rounds up support at the meeting, and everyone votes, even though all the scientists involved, including the IUCN and Mr. McManus, are

saying there is no scientific data for this. It turns into a political rather than a technical debate.

Miss SCHNEIDER. Well, how do you remedy that? Or who would remedy that?

Mr. TREXLER. I think that the United States, especially as head of the Standing Committee. If anyone can remedy that, it has to be governments really standing up and saying you can't continue this way, and these are the reasons why, and exerting some sort of leverage to try and bring the situation under control. It is a very, very difficult thing to bring under control in an international meeting like that.

Miss SCHNEIDER. OK.

Mr. McManus, you were mentioning in your testimony the need for some more scientific data for CITES imports. I wonder what your reaction would be to the idea of taxing individual shipments of wildlife and wildlife products that are imported into the United States and using that money for compiling scientific data?

Mr. MCMANUS. Well, at first glance I think that is probably an excellent idea. The types of science that are needed are first with regard to the listing and determining, as was pointed out earlier, whether the species would benefit or is qualified for listing under the appendices, and that is becoming a serious matter because of the volume of animals and plants under consideration.

But the second thing is to ensure that the countries of origin have the resources they need to properly implement the treaty and make the kinds of scientific determinations they need to ensure that the trade that they are allowing—the exports they are allowing—are sustainable by the populations that are subject to the trade.

And so if that happened, if there was some mechanism developed, I would suggest we look at both problems. And, particulary with respect to the latter, a mechanism would have to be developed to ensure that the resources flow from the traders through to U.S. Government the appropriate authorities in the countries of origin so that they would have greater financial resources to be better players in CITES.

I think, to a large extent, it is difficult to blame some of the exporting nations when they suffer from the kind of economic problems they have, and yet we are the ones that are using their wildlife, and the economics become overbearing for them.

So, generally I think it would be a very good idea.

Miss SCHNEIDER. I just might mention that I have a piece of legislation that passed the House and is currently in the Senate—and I'm hopeful that we can get that passed, but we always need some lobbying help on it, by the way—calling for an international convention on biological diversity. And inherent in that international convention is, number one, leadership on the part of the United States to have our president call for such an international convention. But, secondly, the idea of data collection is also involved.

I had mentioned that Congressman Jim Scheuer from New York and I have a national biological diversity bill, also, that is working its way through the House at this moment, and that bill would provide for data collection of plant and animal species that we have here in this country.

So computerizing the scientific data is something that is coming along, but certainly can use a little bit more push from those interested parties that feel, as I do, that before we could make any policy decisions we ought to have certain scientific criteria upon which to base that scientific policy.

I have just one final question, Mr. Chairman, but it is a question that I'd really like to ask of our representative from the State Department, Mr. Parsons. And since he has been so kind to be here, I wonder if it would be all right if we could ask him to come back.

Mr. FOGLIETTA. Can we recall Mr. Parsons to the witness table? I told you we weren't through with you yet. [Laughter.]

Mr. PARSONS. Same seat.

Miss SCHNEIDER. This is more of a clarification question—and let me first thank you for sitting here through this entire hearing, and also the representatives from the Fish and Wildlife Department of the Interior, because it is rare, indeed, that we have government representatives sit through the entire testimony. I consider that a very strong sign of dedication and willingness on your personal parts, as opposed to delegating this to staff, to sit through the rest of this hearing, so I commend you for that.

Mr. Parsons, I wonder if you could just clarify, for my own purposes: I'm curious as to if we are attempting to enforce CITES with a country like Bolivia, and as we have seen, in some of the examples I raised earlier in the hearing, there has been a lack of strong enforcement and prosecution and collecting of fines, and I mean we really have not gotten terribly tough.

Might part of the reason be that we are concerned about broader ramifications?

For example, I have been doing some work with refugees in the camps in Thailand, and some of the difficulties in making arrangements there had to do with our agricultural policy with rice. So none of these issues can be looked at separately, so that when we are talking about enforcing some laws that deal with a particular country is there, sometimes, the attitude of the State Department that we probably shouldn't come down too heavily on these folks because we are working out some other kind of arrangement on a different level?

Mr. PARSONS. I do not know that to be the case in the Bolivian situation, but in evaluating any projected move that would involve a foreign country we would, of course, have to weigh that in the balance of our other interests with that country and in that area.

I alluded a bit to that in the statement that I made about the United Arab Emirates——

Miss SCHNEIDER. Right.

Mr. PARSONS. Where, of course, we do have hostilities going on and a complicated situation. So it is conceivable that we do—I mean, we do balance all of these actions.

With regard to having that influence, our enforcement of laws in the United States and the CITES regulations at border inspections, I would find that hard to accept.

Miss SCHNEIDER. Yes.

Mr. PARSONS. But I do think that as we weigh our approaches to a foreign government we would have to couch our initiatives in a balanced manner.

Miss SCHNEIDER. Well, I serve on the Science and Technology Committee, and am ranking, also, on the Environment Subcommittee where we do a bit of work in the rhino trade and other environmental and conservation issues.

I have found it very helpful to have the information from the administration about those countries that are consistent violators of one environmental provision or another, or conservation provision, and I have personally found it useful, when I am negotiating with some foreign visitors, or discussing things with them, to say, "Well, look, you're interested in some of our superconductor technology, but it seems to me that unless you are willing to cooperate on CITES, or whatever it might be, we're not going to be terribly inclined to be forthcoming with our technology"—or whatever it is that they're looking for.

Granted, unlike a diplomat, I don't have the power to enforce that, but I think that it is helpful to Members of Congress to have that background information as to which countries are consistent violators of either CITES or other environmental laws.

So I might suggest that if you have some information that you think would be helpful to those of us who are working on this front, I'd appreciate you sending that to us.

[The following was supplied:]

VIOLATOR COUNTRIES

We would certainly be happy to provide you with such information which is available to us as we are informed of your meetings or travel plans in which it would be helpful to you.

Miss SCHNEIDER. Thank you.

I have no further questions, Mr. Chairman.

Thank you, witnesses.

Mr. FOGLIETTA. I want to thank Miss Schneider for what she has contributed to this hearing. I want to thank staff members. And I want to thank the witnesses who appeared here today, as well as you who have been here so attentive in trying to resolve some of these problems.

With that, I declare that this hearing is now adjourned.

[Whereupon, at 1:02 p.m., the subcommittee was adjourned, to reconvene at the call of the chair.]

[The following was submitted for the record:]

OPENING REMARKS OF
THE HONORABLE HELEN DELICH BENTLEY
BEFORE THE
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
JULY 14, 1988

Thank you, Chairman Foglietta and thank you, Miss Schneider, for calling this subcommittee hearing today on an issue that is of great concern to millions of people, not only in the United States, but throughout the world.

The importation and exportation of exotic animals, birds and plants is a very lucrative business --- $5 billion annually, both in the legal and illegal markets.

Wherever and whenever there is a market, regardless of the product, there will be unscrupulous people trying to make a buck and, unfortunately, the future existence of countless species of wildlife and plant life may hang in the balance.

While the actions of the United States in upholding the provisions of the Convention on International Trade in Endangered Species (CITES) may set the standards for the rest of the world to follow, further implementation of that treaty by this country must take into consideration the cavalier attitude of some nations in enforcing existing laws and regulations, and others which deliberately circumvent existing provisions.

While I am reluctant to single out any one country, in reviewing the material before the subcommittee, I was particularly distressed to learn that Hong Kong is an open door to the importation of illegal ivory shipments, shipments that ultimately find their way to the United States.

While we could take steps to curtail the sale of ivory products in this country as a means of stemming the illegal killing of African elephants, I believe pressure should be brought to bear on Hong Kong officials and on the officials of nations where the wanton slaughter is occurring.

Sanctions of one type or another should be placed on those countries that merely pay lip service to wildlife conservation.

Mister Chairman, there is no doubt that budget constraints forced upon the U.S. Fish and Wildlife Service has curtailed that agencies ability to properly monitor the importation of illegal contraband derived from endangered species into this country. A total of fifty-five wildlife inspectors is inadequate to control illegal imports into the United States.

The risk of being caught is minuscule and the danger of being imprisoned or heavily fined is totally absent. The mere confiscation of seized shipments, which had a total valued of $437,000 in 1985, is not a sufficient deterrent to stop illegal imports. The maximum penalties called for under CITES and the Lacey Act need to be imposed, particularly against those who are involved in the importation of endangered species for a profit.

Mister Chairman, I look forward to hearing from the panelist scheduled to appear before us today.

Thank You.

STATEMENT OF RONALD E. LAMBERTSON, REGIONAL DIRECTOR, NORTHEAST REGION, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE COMMITTEE ON MERCHANT MARINE AND FISHERIES, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, U.S. HOUSE OF REPRESENTATIVES, CONCERNING IMPLEMENTATION OF THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

July 14, 1988

Mr. Chairman, I appreciate the opportunity to appear today to discuss the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). I am Ronald E. Lambertson, and although I recently became Regional Director for the Northeast Region of the U.S. Fish and Wildlife Service, I continue to serve as Chairman of the CITES Standing Committee. Accompanying me are Clark Bavin, who is Chief of the Service's Division of Law Enforcement, and Ralph Morgenweck, who has just replaced me as Assistant Director for Fish and Wildlife Enhancement, with responsibility for endangered species and our Management Authority under CITES.

Mr. Chairman, the U. S. Fish and Wildlife Service (Service) is committed to the Treaty and all its provisions. The Service has directed a major amount of its law enforcement resources toward CITES enforcement. I will touch on some of our successes as well as some problems affecting the enforcement of the Treaty. The Endangered Species Act and the Lacey Act Amendments of 1981 are the primary domestic legal authorities controlling wildlife and plant imports and exports. CITES, the major international agreement for the control of trade in wildlife and plants, is implemented through the Endangered Species Act. Except for certain marine mammals and fish, which are under the jurisdiction of the Department of Commerce, the Endangered Species Act places with the Service responsibility for the control of imported and exported fish and wildlife, as well as partial responsibility for plants. The Service has implemented a broad range of programs to enforce the provisions of the Endangered Species Act, the Lacey Act Amendments, and CITES in order to control and monitor the large amount of wildlife that is imported to and exported from the United States. These include the designation of specific ports of entry for wildlife, the staffing of these ports with inspectors and special agents, the licensing of certain wildlife importers and exporters, the development of a national computer system to analyze import and export data, the use of international intelligence to monitor wildlife trade, and cooperation with other Federal agencies and other countries to coordinate activity to better accomplish our mission of restricting the illegal trade in wildlife.

Since the early 1970's, the Service has designated certain ports of entry for the importation of wildlife. The concept of designated ports allows the Service to consolidate shipments at a few locations to better monitor and control wildlife imports. Originally, the Service designated eight ports of entry for wildlife shipments. These were New York, Miami, New Orleans, Chicago, Los Angeles, San Francisco, Seattle, and Honolulu. Since that time Dallas-Ft. Worth has been designated, bringing the total to nine. In addition to these primary ports, special ports along the Canadian and Mexican borders are designated for the import and export of certain wildlife.

In establishing the system of designated ports, the Service attempted to select ports based upon total cargo traffic, wildlife traffic, and geographical diversity. However, the Service recognized that under certain circumstances it would be necessary to allow importers to use other ports because of economic hardship, for scientific purposes, or to minimize deterioration or loss. In these cases the Service issues exceptions to designated port permits.

In 1975 the Service created the Wildlife Inspection program and assigned Wildlife Inspectors to designated ports. The Wildlife Inspector is a uniformed officer of the Division of Law Enforcement who conducts inspections and makes routine clearances of imports and exports of wildlife. Through the use of their individual expertise or through other

experts, they determine the identity of the wildlife and assure that documentation accompanying shipments is valid.

Wildlife Inspectors spend 100 percent of their time working in import/export control. Wildlife Inspectors are authorized to detain for inspection (and seize, if necessary) any shipment presented for import or export.

Prior to the initiation of the Wildlife Inspection program, Special Agents handled all import and export clearance duties. By creating a staff of Wildlife Inspectors the Service has been able to free Special Agents to spend more time on criminal investigative activities.

Today there are 56 inspectors distributed throughout the United States. Each receives training at the Wildlife Inspector Basic School at the Federal Law Enforcement Training Center in Glynco, Georgia. This training is an 80-hour program to orient and prepare new Wildlife Inspectors for the enforcement of Service laws and regulations governing the import and export of live fish and wildlife as well as their parts and products.

The training is designed to familiarize Wildlife Inspectors with Service policies and procedures as implemented and administered at designated ports, border ports, and other ports of entry. Particular attention is given to identifying CITES wildlife, parts and products. Our inspectors are given intensive instruction in the Endangered Species Act, the Lacey Act, and CITES.

Special Agents may become involved with the actual inspecting and clearing of wildlife shipments; however, their primary responsibility is the investigation of known or suspected violations of Federal laws. In this capacity, Special Agents assume responsibility for a wildlife shipment once it has been determined that a violation may have occurred. Special Agents assigned to designated ports spend a major portion of their time on import/export investigations.

In 1983 the Service activated its Law Enforcement Management Information System (LEMIS), a national computer network for processing and retrieving investigative and administrative data as well as information about wildlife imports and exports. These data are used for a variety of purposes, including analysis of wildlife trade to determine if trade patterns exist that may be detrimental to specific populations.

Although the Service is making significant progress in enforcing CITES, problems remain. The U.S. is a major consumer of wildlife products. The number of wildlife shipments increases every year, and handling the volume of wildlife traffic is increasingly difficult. The Division of Law Enforcement is responsible for inspecting practically all wildlife shipments, not just those with declared CITES species.

From 1980 until 1987, wildlife shipments increased from 45,000 to 83,000 -- an increase of 85 percent -- while the number of inspectors rose from 40 to 56.

Wildlife inspections consist of two parts: first, a document inspection of invoices, permits and shipping documents and, second, a physical inspection of the items being imported or exported.

The Service concentrates on commercial rather than personal shipments, in the belief that this has a greater impact on resource protection. In addition, the heavy workload necessitates a concentration on document inspection; only shipments meeting certain criteria will be physically inspected. This results in physical inspections of less than 20 percent of the shipments. Shipments targeted for physical inspection are those that:

1. Have serious errors in documentation.
2. Contain species that are prohibited from export by the country of origin.
3. Are from importers with a history of non-compliance.
4. Arrive or depart from non-designated ports.

5. Were implicated by intelligence information indicating that they may contain illegal wildlife.
6. Arouse a suspicion by the wildlife inspector that something may be wrong.
7. Are clearly in violation of U.S. law.

CITES does not address many practical problems that are faced by inspectors every day. The system of Appendices and permit issuance rules are only the first step in affording protection to endangered plants and animals. The following examples demonstrate some of the difficulties facing inspectors on a daily basis.

The two to three million containerized cargo shipments that enter the United States annually are a major impediment to thorough inspection. These containers are sealed metal crates about 8'x8'x40' in size, can be accessed from only one end, and contain more than seven tons of cargo. Each container must be unloaded according to union rules at most seaports, taking an average of three to six hours to strip and inspect.

The combination of size, volume of goods, access problems, and expense make these shipments extremely difficult to inspect. The Service is able to inspect only a small percentage of these shipments, even though we know they provide a relatively easy way to smuggle parts and products into the United States. For example, in 1983 we inspected 82 containers at the port of Newark, N.J., and made 31 seizures valued at over $700,000. Penalties assessed in these cases were over $16,000 plus the value of the forfeited goods.

Wildlife imported through international mail facilities must meet the same statutory and regulatory requirements as wildlife imported by other means of transportation and present yet another major inspection problem. Mail shipments provide an ideal way to smuggle in wildlife, particularly reptiles. Without actually opening a package the Service will be unaware that a parcel contains wildlife. There is also no control over the international mail facility at which the item arrives. Because of this, Service policy allows the importation of mail shipments at any international mail facility. Only 2,900 mail cargo importations were inspected in 1986.

Recently, a "breathing" air mail package containing a python arrived from Australia at a San Francisco Postal Service facility. The inspector's discovery led to an investigation that resulted in the felony convictions of two California men for smuggling 90 reptiles valued at over $40,000. The two men made "collecting" trips to supply the U.S. market with unusual reptiles, including sand monitors, blotched blue-tongued lizards, and olive pythons from Australia and gila monsters, beaded lizards, and tortoises from Mexico. In addition to being fined a total of $14,000, the men forfeited the illegally imported animals, which were protected by CITES and by foreign law. Inspectors face other problems beyond those associated with the sheer volume of trade. Of increasing concern has been the issue of captive-breeding. Although CITES has instituted a system of listing approved captive-breeding facilities, enormous trust must be put into the foreign management authorities who verify that the facilities are abiding by the requirements. It is impossible for inspectors to distinguish captive-bred from wild-taken specimens of most species.

A related identification problem involves the listing of subspecies. When either CITES or the Endangered Species Act lists one or several subspecies for protection, it is generally impossible for an inspector to determine whether an imported specimen is of the protected subspecies. As even taxonomic experts often disagree on subspecies identification, further training for inspectors would not remedy the problem. Moreover manufacturing processes that obliterate certain characteristics of skins often make it impossible to identify species, let alone subspecies.

Live bird inspections are complicated because of quarantine procedures, and care must be taken not to transmit diseases among birds of different shipments. In addition, young birds often do not exhibit identifying characteristics typical of adult birds, as are portrayed in most identification manuals.

Pre-existing stockpiles of raw skins present yet another problem. Source countries will often establish a ban on exports of certain native species or of all native wildlife. It is common for intermediary countries to claim that the products they are exporting to the U.S. were derived from skins they imported prior to a source country's ban. While these stockpiles exist, inspectors have no way to determine when such skins were actually imported by the intermediary country from the source country.

Although there are many others, I will cite one final problem that illustrates again our dependence on the competence and integrity of other management authorities.

Yellow-crowned amazons are exported from Honduras in greater quantities than ornithologists believe actually exist there. Yet, we have difficulty proving they are being smuggled into Honduras from surrounding countries that prohibit their export. If Honduras issues CITES permits for them, we accept them and clear the shipment.

This exemplifies a major problem with CITES implementation -- the lack of biological information on populations of heavily traded species. Without this information, management authorities in many of the less developed countries are issuing permits for the export of large numbers of Appendix II species, apparently without knowing the impact on the species in the wild.

To resolve this problem, the CITES Secretariat has been asked to coordinate studies on certain heavily traded Appendix II wildlife species including: rhea, blue-fronted amazon, Moluccan cockatoo, blue-streaked lory, Chilean tortoise, Argentine grey fox, Geoffroy's cat, ocelot, margay, little spotted cat, pangolins, Fisher's lovebird, yellow-naped amazon, macaws, southeast Asian cockatoos, pythons, boa constrictors, and the African grey parrot.

Unfortunately, the Secretariat has not been able to conduct the necessary planning and field work. The Service is exploring ways to assist the Secretariat in carrying out these vital studies.

In fulfilling its mission of interdicting the illegal wildlife trade, the Service relies upon the cooperation of other Federal agencies. The United States Customs Service (Customs) is primarily responsible for inspection and clearance of all goods imported into the United States. In this capacity, Customs is the first line of defense against illegal wildlife shipments.

There are approximately 5,500 Customs inspectors and 291 Customs ports of entry. At designated ports, Customs normally refers each wildlife shipment to Service Wildlife Inspectors for inspection and clearance. At ports that do not have Service officers, Customs inspectors either clear wildlife shipments directly or, if they have questions about a particular shipment, they will contact the nearest Service officer for guidance.

In order for Customs personnel to become more familiar with assisting Service personnel at the various ports of entry, the Service routinely provides training for Customs personnel at the Federal Law Enforcement Training Center in Glynco, Georgia. The concept is not to make Customs personnel experts in performing the functions of a wildlife inspector but to provide them with a capability to decide when Service personnel must be notified.

The enforcement of CITES is also accomplished by methods other than the actual inspection of shipments containing wildlife. The Washington Law Enforcement office has a Special Agent assigned to coordinate Endangered Species investigations. This desk encompasses all the areas involving the import/export of wildlife. One of the Agent's primary responsibilities involves CITES.

The Service often communicates with foreign governments to coordinate the investigation of federal wildlife violations predicated on foreign law. The State Department has been extremely cooperative when it has

become necessary to route communications through official diplomatic channels.

For example, they were valuable during the negotiations with Singapore on the de facto U.S. ban on wildlife trade that occurred in 1986, and they have been instrumental in handling sensitive communications with the government of Burundi on the current elephant ivory issue. The State Department also orchestrates the verification of foreign CITES permits or other documents and the clarification of foreign laws and decrees, which often is a time-consuming project.

Recent examples include our attempts to clarify the Philippines ban on raw coral exports and a Honduras ban on the export of certain species. A notification from the Secretariat is not sufficient for the Service to begin U.S. enforcement of a foreign country's wildlife laws through the Lacey Act. Numerous, lengthy cables have been exchanged with both of these countries, trying to clarify their laws to an extent allowing the Service to enforce them. We have yet to resolve either of these situations.

Documents may be questioned for a variety of irregularities. A permit may be in the correct CITES format, that is, with a clearly stamped permit number, the date of expiration, the stamp of the designated management authority, and a proper signature, but the quantity block may be blank, a number may appear that shows signs of alterations, or species unauthorized for export may be added to the permit by the importer, after it has been issued.

For example, gray-cheeked parakeets may be exported from Peru with a proper CITES permit, while canary-winged parakeet exports are strictly prohibited. In a recent shipment, prohibited species were inserted on the permit and mixed with legal birds, thereby temporarily avoided detection.

In other cases, CITES re-export certificates that appear legitimate accompany shipments of Appendix II wildlife, but the certificate indicates that the wildlife was exported from the country of origin at the time a ban on the export of the wildlife was in effect.

In these examples, a Wildlife Inspector would send the CITES permit and accompanying documents to the Washington Law Enforcement Office to determine if they should be forwarded to the foreign management authority for validation. Documents requiring verification are then transmitted to the State Department for subsequent relay to the appropriate foreign government.

Sometimes this process must be repeated several times before the country of export responds. This may place the Service in an unfavorable position, if the shipment must be held up pending a response from the foreign government. When the foreign government's response is unduly slow, and in some cases it has taken months to get an answer, the Service may conditionally release the shipment until an answer is obtained.

Another problem that requires verification of documents occurs when the management authorities themselves make mistakes on the permits. In these cases the foreign management authority issues a valid permit that does not meet the CITES criteria. This may be due to inexperienced personnel, laissez faire attitudes, or political or other reasons.

The Service must assume that such CITES permits may not be valid, and must spend time ascertaining the validity of a possibly legitimate document. This policy has sometimes resulted in a backlash where a foreign government then begins to request verification of all U.S. CITES export permits, adding to the workload. A solution to such occurrences would be a strict adherence to CITES policy and resolutions by all management authorities.

The Washington Office must also respond to inquiries from the public concerning the import and export of wildlife. Most of these requests involve wildlife that are afforded protection under CITES. These requests usually are submitted as Freedom of Information Act (FOIA) requests. To fully comply with FOIA requests, the Washington Office must devote great

amounts of time to the process. The time required to respond to such requests varies with the complexity of the request, from one hour to three months.

Another time-consuming procedure involves compiling and submitting information for the Annual CITES Report. Washington Office staff must spend many hours retrieving and verifying the information required for the report. Nevertheless, the Service is committed to submitting valid information and will devote the proper amount of research time to accomplishing this goal.

As previously mentioned, CITES is implemented by the Endangered Species Act. One section of the Act prohibits special, more restrictive regulations for the import of threatened, non-commercial Appendix II CITES species if the import is in compliance with CITES. A problem may arise when an unscrupulous importer uses this exemption to import Appendix II items for commercial purposes and claims that the import is non-commercial. The burden is then on the Service to prove the shipment was commercial.

One important aspect of enforcing CITES is the interaction between our Division of Law Enforcement and foreign management authorities and law enforcement agencies. Few countries have agencies comparable to the Service's Division of Law Enforcement, and the Division of Law Enforcement is one of the most advanced organizations in the world in the field of wildlife law enforcement. At times the lack of expertise in other nations does present problems.

Frequently, the Service must transmit investigative leads to foreign governments. These leads may range from a request for a follow-up investigation, to an intelligence brief on an individual who resides in the foreign country, to information concerning an illegal act that may have been committed by a U.S. subject.

Occasionally, the foreign management authority is not capable of handling the information from a law enforcement perspective. These organizations are generally biologically oriented and must transfer law enforcement matters to either a police or customs agency. In certain situations such information is sensitive and the number of people who "need to know" must be limited; that is, as more people gain access to sensitive information, chances increase that the information will be leaked to the wrong people.

Because of this, the Division of Law Enforcement has communicated directly with the foreign law enforcement organization in some situations, in order to safeguard an investigation. Sometimes these agencies are not familiar with CITES and are therefore not anxious to attempt such an investigation. Our staff resources normally do not allow us to send an agent to a foreign country to coordinate an investigation with their officials. Therefore, our success is limited in prosecuting violations in those types of investigations.

The development of liaisons with foreign management authorities and law enforcement agencies has resulted in several productive enforcement seminars. Such meetings have been held in Iceland, England, Mexico, and Canada. During these meetings many items of mutual interest were discussed, including joint agency investigations, sharing of intelligence information, development of joint policies, and so forth.

For example, the Division of Law Enforcement has provided two training sessions in wildlife law enforcement for Mexico's Secretariat of Urban Development and Ecology. The training sessions took place last December in Mexico City. One positive result of the training has béen a tremendous amount of interaction between the Service and the Government of Mexico in matters involving the illegal movement of wildlife between our two countries.

The Division of Law Enforcement has also engaged in joint investigations with Canadian law enforcement agencies involving CITES violations. This interaction has resulted in a continuous sharing and exchange of

intelligence information. The Service is currently engaged in several law enforcement projects with Canadian authorities that have uncovered CITES violations.

Another project that the Service has undertaken involves a joint venture with the U. S. Customs Service. Hopefully, it will result in a new investigative tool for the Division of Law Enforcement by providing another method for tracking wildlife shipments. The Division of Law Enforcement has agreed to assist Customs with the implementation of a new computerized cargo system. It will allow the Division access to the extensive Customs data base. The system is the first of its kind in the world, and it is anticipated to interface with several foreign law enforcement agencies in the future.

The Service is also moving to address the difficulties inherent in the identification of wildlife products. While the Service has the capability to identify whole animals and products containing large pieces of wildlife, such as boots, purses, fur garments, and so forth, it is often impossible to identify small items such as watch bands and trim.

Even more difficult to determine is the identity of products such as cosmetics and oriental medicines that are chemical compounds composed in part of wildlife products. Unless the wildlife is declared as an ingredient on the packaging the Service faces difficulty in proving the actual contents. Many species used in this trade are protected under CITES.

To improve our capabilities, the Service is constructing the world's first wildlife forensic laboratory, located in Ashland, Oregon. One priority of the lab will be the identification of CITES wildlife in any form. The lab will be staffed by some of the finest forensic criminologists in the United States and will contain state of the art forensic equipment. Besides providing forensic analysis for the Service, the lab will provide analysis for foreign law enforcement agencies.

In summary, enforcement of CITES will continue to be a high priority commitment of the Service. Despite the problems, progress has been made. We feel that the future for CITES is promising. We appreciate the Committee's interest in CITES and the opportunity to brief you on the enforcement issues.

This concludes my prepared remarks, Mr. Chairman. We will be glad to answer any questions you may have.

STATEMENT BY

EDMUND M. PARSONS
DIRECTOR, OFFICE OF ECOLOGY AND NATURAL RESOURCES
BUREAU OF OCEANS AND INTERNATIONAL
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS
U.S. DEPARTMENT OF STATE

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

JULY 14, 1988

Mr. Chairman,

Thank you for inviting me to present a statement about a very important international wildlife conservation agreement.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is the product of a conference held in Washington, D.C. in 1973, at U.S. invitation, to promote conservation of endangered and potentially threatened species of wild fauna and flora. This Convention provides a mechanism for protection of endangered species of wildlife and plants against over-exploitation through international trade. Largely a U.S. initiative, it was encouraged by Congress in the Endangered Species Act of 1969. The Convention entered into force July 1, 1975. It has since become the key instrument for international wildlife conservation, with 95 countries as Parties to the Convention including most major producers and consumers. CITES is also a significant element of U.S. conservation policy and continues to receive broad public support domestically.

The provisions of the Convention are implemented by a Secretariat which reports to a biennial Conference of the Parties. The Secretariat is given further guidance by a Standing Committee and several specialized committees. It is headed by a Secretary General, currently Eugene Lapointe of Canada, with a total of eight professional and seven clerical members. The Secretariat is located in Lausanne, Switzerland.

CITES' principal achievements are the identification of over-exploited species and the establishment of trade controls to protect those species. Other accomplishments include: (1) designation of wildlife authorities for the first time in many countries; (2) development of guidelines for the safe shipment of live specimens of plants and animals; (3) preparation of a species identification manual for use by customs officials at ports of entry; (4) improved standardization of documentation, annual reporting on worldwide wildlife trade, and information requirements to amend listings of endangered and threatened species; (5) more effective trade controls for specimens such as elephant ivory, rhinoceros horn, whale products, reptilian leather, exotic plants and rare birds; (6) improved acquisition and exchange of wildlife trade data and statistics; and (7) improved cooperation among members in conservation of endangered species.

CITES is funded by voluntary contributions made by member nations. The funds are administered by the United Nations Environment Program (UNEP) via a special Trust Fund. CITES' budget is approved for two year periods at the biennial Conferences of the Parties. The CITES Trust Fund supports meetings of Parties and certain operations of the Secretariat such as enforcement of the Convention's trade regulations and identification of appropriate levels of trade control. Since the Trust Fund is not adequate to finance all project work authorized by the Parties, CITES has established a Special Projects Fund supported by voluntary contributions from members, conservation groups and trade associations. Contributions are earmarked for projects of special interest such as population studies of heavily traded species (e.g., Nile crocodiles).

Contribution levels to CITES for FY 1988 and FY 1989 were set when the 1988-89 biennial budget ($3,000,000) was approved at the Sixth Conference of Parties which convened in Ottawa in July 1987. Country levels are based on the United Nations assessment scale as adapted to CITES. The United States contributed $170,000 for FY 88.

The U.S. has been actively involved in CITES since its inception and currently serves as Chair of the CITES Standing Committee. Such participation provides the primary vehicle for U.S. leadership in an area of international wildlife protection and complements U.S. implementation of the Convention domestically through the Endangered Species Act. U.S. participation is also a means by which U.S.-based conservation and trade organizations -- strongly supportive of CITES -- exert influence internationally on wildlife issues.

In addition, CITES facilitates private commercial ventures in wildlife. Farming and ranching of some endangered species have resulted in successful breeding of certain animals and their subsequent removal from endangered status. Such actions substantially benefit producers and traders.

The Department of State fully supports the U.S. Fish and Wildlife Service of the Department of the Interior in its lead role in implementing CITES. The State Department participates in the biennial Conference of the Parties and in the meetings of the Standing Committee. Special attention is paid to budgetary issues, as CITES is funded by AID's International Organizations and Programs account, which is managed by the State Department. Reporting on wildlife issues by Embassies is encouraged, and requests are made for contact with host governments on many CITES issues -- from authenticating CITES documents to encouraging increased conservation efforts and membership in CITES itself.

As an example, our Embassies have reported fully on the status of the endangered Rhinoceros, and have been providing valuable advice concerning the formation and agenda of a special CITES mission to certain Middle Eastern countries where Rhino horn is traded. Similarly, Embassies have facilitated movement of Rhinos to U.S. zoos for breeding purposes. Assistance is also provided to U.S. Department of Justice officials as they travel to obtain information to prosecute violations of U.S. wildlife import regulations.

In fact, an array of U.S. agencies are concerned with the survival of endangered and threatened species worldwide. In addition to State, Interior and Justice, the Departments of Agriculture and Commerce play key roles. Working together, strong efforts are being made to continue the U.S. role in preserving the world's wildlife heritage, at home and overseas.

TRAFFIC(U.S.A.)

World Wildlife Fund

Statement

of
GINETTE HEMLEY
Director
TRAFFIC(U.S.A.)
World Wildlife Fund

before the

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

of the

House Committee on Merchant Marine and Fisheries

on

U.S. Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

July 14, 1988

1250 Twenty-Fourth Street, NW
Washington, DC 20037
202/293-4800 Telex 64505 PANDA

A Unit of The Conservation Foundation

Mr. Chairman, I am pleased to have the opportunity to present the views of TRAFFIC(U.S.A.) on the status of U.S. implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the role the U.S. government plays in controlling international trade of the world's endangered and threatened wildlife. I am Ginette Hemley, Director of TRAFFIC(U.S.A.), the wildlife trade-monitoring program of World Wildlife Fund. TRAFFIC(U.S.A.) is part of a global network of eleven offices that specialize in monitoring international trade of plants and animals and their products. We work closely with the CITES Secretariat and CITES member nations to evaluate the impact of trade on threatened species, to provide information to help improve the implementation of CITES, and to pinpoint illegal wildlife trade problems. The TRAFFIC Network is the only nongovernmental organization devoted solely to the task of tracking the international trade in wildlife.

TRAFFIC(U.S.A.) applauds the Subcommittee's interest in reviewing how the U.S. government implements CITES. We see this review as critical because it is the principal wildlife consumer markets of the world -- the U.S, the European Economic Community, and Japan -- that together share the greatest responsibility for properly implementing the Convention and minimizing the effect of trade on the world's endangered and threatened species. Without proper enforcement in the importing countries, CITES stands little chance of succeeding over the long term.

In the thirteen years since the Convention came into force in this country, the U.S. has played a leadership role. Our government, primarily through the U.S. Fish and Wildlife Service (FWS), has helped shape CITES policy development, devoting considerable expertise, manpower, and funding to numerous CITES initiatives. In addition, the U.S. has chaired important CITES committees and working groups and currently presides over CITES' most important policy-making body, its Standing Committee. Although the U.S. has frequently failed to meet its CITES funding obligations, we are pleased to hear that the House and Senate Appropriations Committees are recommending substantial increases for FY 1989.

Yet, while most CITES parties clearly look to the U.S. as a conservation leader, shortcomings within our own relatively sophisticated trade control system preclude effective implementation of many treaty provisions. The likelihood that a wildlife shipment will enter or leave this country illegally remains high because of weaknesses in the system. The sheer volume of trade and the limited amount of manpower to oversee it -- 57 wildlife inspectors for over 80,000 shipments per year -- is certainly a major impediment to consistent CITES enforcement. But we have found through our routine trade-

monitoring activities that other problems in the day-to-day workings of the agencies involved in wildlife trade control also contribute to ineffective implementation of CITES.

We have discussed with the Fish and Wildlife Service whether the U.S. is adequately fulfilling its obligations under CITES and related U.S. laws that control international wildlife trade. As a result of these discussions, we are beginning a formal review of U.S. implementation of CITES with the aim of developing, as needed, concrete recommendations for improving the government's effectiveness at enforcing wildlife trade controls. This effort will complement a similar project recently undertaken by the EEC with the assistance of the European TRAFFIC offices -- an effort prompted largely by U.S. government criticism of the Community's own CITES controls. That project, which was carried out over the last two years, has already resulted in a number of important improvements in CITES implementation in several EEC member states. In addition, projects underway by the TRAFFIC office in Japan are helping to steer that country, one of the Convention's most persistent violators, towards better implementation of CITES. It is time now, we believe, to take a careful look at our own wildlife trade control system.

At this point, Mr. Chairman, our comments are necessarily brief as the study will not be completed until next April. Some of the key issues we plan to cover in our review include assessments of:

- how specific CITES-related activities are carried out by the principal agencies involved in wildlife trade control -- the U.S. Fish and Wildlife Service, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, and the Customs Service;

- how the different agencies coordinate their activities;

- how international communications are handled and how information is channeled among the different agencies;

- whether the resources available to satisfy Management and Scientific Authority obligations under CITES are being used effectively.

TRAFFIC trade analyses lead us to believe that CITES enforcement is hampered by the division of trade control responsibilities among different agencies lacking any clear coordinating mechanism. For example, a TRAFFIC study carried out in 1985 concluded that the psittacine, or parrot, importation process in the U.S. -- which is jointly overseen by APHIS and FWS -- is fraught with procedural and administrative inadequacies that provide loopholes through which trade controls can be avoided. Although the study made a number of recommendations for improvements and was submitted to both APHIS and the Fish and Wildlife Service, we have seen little evidence to suggest that

the situation has improved.

We have also found that communication between the U.S. government and other CITES Management Authorities is often inadequate to ensure proper enforcement of CITES and other statutes such as the Lacey Act. For example, the U.S. continues to accept shipments of raw coral from the Philippines, in spite of that country's longstanding coral export ban. Documentation on the ban, which has been in effect since at least 1981, has been readily available. However, the U.S. government has yet to stop the import of Philippine corals through our ports: customs records show that an annual average of 730 tons have entered the U.S. in the last seven years. In September 1987, the Philippine CITES Management Authority confirmed to TRAFFIC that the ban was fully in force and sent us copies of the relevant Philippine laws. Although we passed this information on to FWS, coral shipments continued to enter the U.S., totalling 333 tons from October 1987 through March 1988. It is unclear to us why these shipments continue to go unchecked.

In our review of U.S. implementation of of CITES, we also intend to examine the legal and policy framework which allows the U.S. to implement the Convention to determine:

- whether the regulations that implement CITES are adequate;
- which resolutions adopted by the CITES parties require implementation by the U.S. government;
- how enforcement policy is established and communicated to personnel at the ports.

The principal statutes which provide the basis for wildlife trade regulation in the U.S. -- the Endangered Species Act, the Lacey Act, and the Marine Mammal Protection Act -- give the U.S. government broad authority to control the import and export of most wildlife. At the same time, the U.S. regulations that implement CITES are seriously deficient. The existing U.S. CITES regulations -- part 23 of 50 CFR -- are more than ten years old, and do not incorporate the resolutions adopted by the parties during the five CITES conferences that have taken place since 1979. A careful review of these resolutions is needed to determine which are being officially implemented by the U.S. government and which warrant incorporation into U.S. regulations.

The practical effect of the U.S. government's failure to implement certain CITES resolutions can be seen in the U.S. trade of elephant ivory. In 1985, the CITES parties adopted a resolution to provide the basis for a new ivory trade quota control system. The success of this system, the culmination of several years of work by CITES parties, very much depends on the full commitment of all member nations to scrutinize shipments of raw ivory entering or leaving their borders. In adopting the

resolution, the parties also recommended that CITES nations register their existing stocks of African elephant ivory in order to better track potentially illegal shipments. Unfortunately, this resolution was not, until recently, implemented by the U.S. government. In a TRAFFIC study undertaken last year, we found that the ivory trade control procedures outlined in the Fish and Wildlife Service's Import/Export Manual, which provides guidelines and policies for inspectors, had not been updated since 1983. Wildlife inspectors were apparently uninformed about the ivory quota system, and as a result, over 600 elephant tusks valued at an estimated $450,000 were allowed into the U.S. from Zaire in 1987 under apparently fraudulent permits, having been exported outside of the quota established by that country. We are pleased that FWS is now investigating some of these imports, although this investigation may have been avoided if the U.S. had adopted the ivory quota system.

Proper control of other wildlife product imports has also been impeded by the U.S. government's failure to implement other CITES resolutions. For example, the CITES parties agreed at their 1987 conference in Ottawa to strictly limit the circumstances under which an importing party can accept a permit for a shipment when it is issued after that shipment arrives in the importing country. This so-called "retrospective issuance" of CITES permits allows traders to ship wildlife goods without proper review and inspection at the exporting end. However, the U.S. has apparently not yet implemented the resolution, and a number of ports in the U.S. are accepting permits issued retrospectively for certain Appendix II species, reptile skin products imported from Italy in particular. In addition, it is worth mentioning that Fish and Wildlife Service accepted an Appendix I export permit issued retrospectively by Chinese authorities for the recent U.S. import of two giant pandas now on exhibit at the Toledo Zoo.

The U.S. government has also generally failed to adopt CITES amendments within the 90-day period required by the treaty, which has in some cases allowed trade in newly-designated Appendix I endangered species to go temporarily unchecked. Amendments to the CITES appendices, that is the treaty's protected species lists, are made at the biennial Conferences of the Parties. For the last three CITES conferences, the U.S. government has officially adopted these changes at least two months later than the date required under the Convention. In 1985, this delay apparently allowed for the import of at least 28 Appendix I scarlet macaws in eight separate shipments that should have been subject to review by the U.S. Scientific Authority. Because the CITES amendments had not been published as regulations, FWS took the position that there was no legal basis for stopping these shipments.

The day-to-day activities of inspection personnel at the U.S. ports are obviously key to effective implementation of CITES. As part of our study we plan to review the process

through which the U.S. government screens, inspects, and records wildlife shipments. We intend to assess:

- o whether there is a sufficient number of trained inspectors to properly implement CITES;
- o whether wildlife trade is restricted to the designated ports;
- o how priorities for shipment inspection are established;
- o whether inspectors are adequately informed of changes in CITES procedures and priorities;
- o whether the data recording system for monitoring trade is adequate to fulfill U.S. reporting obligations under CITES.

Fifty-seven trained inspectors currently oversee the more than 80,000 wildlife shipments that enter and leave the U.S. annually, a relatively minute staff compared to the vast volume of trade. Most shipments screened by inspectors, including those containing CITES species, are subject to paperwork inspection alone; fewer than one in five shipments entering and leaving the U.S. is physically inspected. A limited number of staff is likely be one impediment to comprehensive inspection; but in addition, under current FWS policy, much of an inspector's time is spent entering data into the Fish and Wildlife Service's law enforcement computer system. While there is little question that computerization of this data is important for trade monitoring purposes, it is a task that could seemingly be delegated to trained clerical staff. And it is not surprising that, with limited career growth potential for wildlife inspectors and burdened with heavy clerical responsibilities, the FWS inspection program has high turnover.

The wildlife inspector's job seems further encumbered by the lack of direct or timely access to CITES notifications and other international communications issued to assist with enforcement. Directives from Washington to the ports must generally go through the regional offices of the Fish and Wildlife Service, a process that can impede efficient enforcement. Also, directives on potentially illegal shipments are often lacking altogether. For example, the U.S. government continues to accept shipments of caiman skin products of apparently illegal origin, in spite of well-documented information on the legal status of the species. More than $20 million worth of products made from caiman declared as originating in Colombia were imported into the U.S. from Italy during 1984-1986, in spite of the fact that Colombia has restricted caiman skin exports to stockpiles inventoried in 1974. Information TRAFFIC received in late 1987 from the Colombian CITES Management Authority indicated that only a small number of skins have been authorized for export in the last four years. In March of this year we urged the FWS to contact the

Italian Management Authority to verify the legality of Colombian caiman products and to clarify the status of caiman skin stockpiles being held in that country. To the best of our knowledge, FWS has yet to follow-up, and Colombian caiman skin products continue to pour into the U.S. via Italy.

We are also concerned that an increasing number of wildlife shipments are being allowed to enter the U.S. through nondesignated ports. This is largely the result of a special user fee system imposed in 1986 that has allowed for the recent addition of individual wildlife inspectors to at least seven nondesignated ports around the country. While revenues earned for wildlife shipment inspection are an important source of funds that could potentially benefit wildlife trade enforcement, the current practice of allowing shipments through nondesignated ports should be reviewed.

As with contraband drugs, there is little doubt that wildlife continues to enter the U.S. illegally in ways that completely escape government detection. For example, the Justice Department estimates that at least 100,000 birds, mostly parrots, are smuggled across the U.S.-Mexican border each year. It is unclear just how many shipments enter the country disguised as non-wildlife goods, or that simply go undetected by FWS because Customs officials, which often flag the illegal wildlife shipments that FWS investigates, are decreasing the number of random physical checks they make. This trend is of particular concern regarding shipments entering the country as containerized ocean cargo where Fish and Wildlife Service inspection is especially weak. We intend, as part of our study, to evaluate the implications changes in Customs controls may have on the Service's ability to interdict illegal wildlife shipments.

We are pleased to see that, over the last two years, the Fish and Wildlife Service has greatly improved its procedures for compiling the U.S. annual report on trade required by the Convention. The reports are more complete than in previous years, and have been submitted to the CITES Secretariat in a more timely manner. These changes are critical, as the sheer volume of U.S. trade makes this country's report key to any analysis of worldwide trade trends.

However, while recent U.S. annual CITES reports appear to have met most of the criteria established by the Convention, data reporting is still not consistent for both animals and plants. A number of CITES plant transactions are listed only to the family or genus level. In addition, while the law enforcement computer system contains names of importers and exporters of animals and animal products, the same type of information -- although it is available -- is not computerized for plants. These data could potentially be of great use to law enforcement activities.

We recognize the Fish and Wildlife Service's efforts to compile better data on CITES trade, but we would also like to point out that computerized information is still lacking for thousands of shipments containing other species. Some of these species are traded in extremely large numbers and could be threatened by trade. While CITES species are and clearly should be the priority, there is little possibility for evaluating the impact of trade on hundreds of other species since there is no easy way to retrieve the information.

Mr. Chairman, the points I have mentioned above touch on some of the key issues we intend to cover in our evaluation of U.S. implementation of CITES. We hope to develop constructive recommendations on how the U.S. government can improve its wildlife trade control efforts -- a prospect we see as critical to the global success of CITES. TRAFFIC will keep you informed about the progress of the study and looks forward to sharing its results with you in a few months.

Thank you.

The Jane Goodall Institute for Wildlife
Research, Education and Conservation
P.O. BOX 26846 • TUCSON, ARIZONA 85726 • (602) 792-2075

TESTIMONY SUBMITTED TO

THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE HOUSE

COMMITTEE ON MERCHANT MARINE AND FISHERIES

concerning

IMPLEMENTATION OF CITES

by

Dr. Geza Teleki, Chairman
Committee for Conservation and Care of Chimpanzees

on behalf of

Dr. Jane Goodall, Board of Directors
The Jane Goodall Institute

13 July 1988

(Appended by 81 Pages* of Documentation)

*These were placed in the files of the Committee.

CIRCUMVENTION OF CITES RESTRICTIONS ON CHIMPANZEE TRADE

The chimpanzee (Pan troglodytes and Pan paniscus) is currently protected by a wide variety of national and international rules and laws in many countries of export and import. Trade in chimpanzees continues, however, even among CITES member nations, as these primates have been targeted for service in biomedical research, including study of AIDS. Exemptions to trade restrictions can usually be readily invoked for such purposes, in the United States and elsewhere.

Allegations by some elements of the biomedical research community, including the National Institutes of Health (NIH) at the U.S. Department of Health and Human Services, that a shortage of captive chimpanzees is inhibiting progress in AIDS research could threaten the survival of sharply declining wild populations on an unprecedented scale. Perceiving trade restrictions as unnecessary barriers to necessary exploitation of chimpanzees, some members of the biomedical community are actively seeking ways to subvert or otherwise circumvent existing restrictions on gaining access to wild-born chimpanzees. This testimony focuses on one such instance but also includes supplemenatry information on others to reveal that a pattern of disregard for national and international laws and regulations has been developing over a period of years.

In the United States the integrity and the spirit of two legislative measures protecting chimpanzees are at stake: the Endangered Species Act (ESA) and the Animal Welfare Act (AWA). On the international front, two other measures that also affect chimpanzee protection within the United States are at stake: the Convention on International Trade of Endangered Species (CITES) and the WHO/ECG Policy Statement on Use of Primates for Biomedical Purposes.

The chimpanzee was placed on Appendix I (threatened with extinction by overexploitation) of CITES in 1976. The chimpanzee was granted threatened status (likely to become endangered in the foreseeable future throughout all or most of its range) on ESA in 1976, and a review on reclassifying chimpanzees to endangered status (threatened by extinction) was initiated by the U.S. Fish and Wildlife Service in early 1988, based on substantial information indicating that such action may be warranted, with a final decision pending by 4 November 1988. The chimpanzee was covered by the WHO/ECG Policy Statement (considered for use in biomedical projects only if they are obtained from existing self-sustaining captive breeding colonies) in 1981, a position publicly reconfirmed by WHO's Director General on 13 April 1987. It is of utmost importance that these protective measures not be breached if wild and captive populations are to survive.

As the appended newsclippings indicate, a novel method of bypassing CITES was pioneered in the early 1980s by a foreign firm, IMMUNO AG. of Austria, which first proposed to set up a chimpanzee station in Sierra Leone and then, failing in that, acquired 20 chimpanzees from that country in a shipment which landed at Vienna on the night of 30 July 1986. That shipment became a focal point for international public controversy which has not yet abated.

Together with other public controversies surrounding a 1983 importation of chimpanzees confiscated by Austrian authorities and poor housing conditions for chimpanzees held at the IMMUNO laboratories, the 1986 trade case led to 60+ lawsuits filed by IMMUNO against critics (journalists, scientists, conservationists, etc.) in Europe and the United States. In a statement issued on 20 January 1988, the CITES Secretariat concluded that both the export from Sierra Leone and the import by Austria were in "violation of the provisions of the Convention and also contrary to its spirit." The chimpanzees remain at IMMUNO, however, and according to company sources have been assigned to AIDS research in a collaborative program with the United States.

Evidence has been obtained that an agreement was signed by NIH to test "recombinant vaccinia virusus" on these and other chimpanzees housed at IMMUNO. The date of that agreement, 23 July 1986, preceeded the 30 July 1986 arrival of 20 infant chimpanzees by one week, suggesting collusion by NIH in obtaining these wild-born chimpanzees from Africa. Nevertheless, a letter signed by NIH's Director James Wyngaarden on 22 September 1986 stated that "no new wild caught chimpanzees will be used for NIH supported AIDS research." Presented by many other sources at NIH as an institutional policy on using only chimpanzees previously contaminated by hepatitis tests, the aims of the NIH/IMMUNO partnership illustrate that policies presented to the American public are not binding in NIH's overseas activities.

Another matter of interest in the NIH/IMMUNO collaboration concerns a Statement of Compliance with Standards for Humane Care and Use of Laboratory Animals by Foreign Institutions, written on IMMUNO letterhead and signed on 9 March 1987 in Vienna and then approved on 11 March 1987 in Washington. This event occurred 5 months after IMMUNO acknowledged the arrival of viral reagents from NIH in a letter dated 24 October 1986 and some time after testing had started. Approval of such a statement of compliance (and the subsequent issuance of an official U.S. government compliance number to the participating laboratory) is normally processed before a project is initiated, and commonly takes months rather than merely 2 days to be conferred. Also, in the case of a foreign laboratory that cannot be inspected for compliance with our standards of animal care by U.S. government inspectors, the statement of compliance is a meaningless assurance that serves only to absolve NIH from any further responsibility.

90-434 0 - 89 - 3

Clearly the NIH/IMMUNO agreement was not handled via routine channels, but was expedited for probable reasons of sensitivity and secrecy. This occurred despite the fact that several court proceedings pending at the time in Vienna concerned substandard housing of chimpanzees by IMMUNO, including the use of cages (some measuring only 22 x 32 x 49 inches) that did not meet the minimum size requirements of the U.S. Animal Welfare Act.

Denial by NIH of any knowledge that the AIDS viral reagents supplied to IMMUNO were to be tested on wild-born chimpanzees housed in unacceptable conditions is refuted by several events: IMMUNO's repeated public claims that the 20 chimpanzees were imported for this collaborative purpose; the involvement of an NIH negotiator for the agreement, Dr. Robert Gallo, who was interviewed by the media in Vienna on several occasions while in the company of IMMUNO representatives and who therefore knew about the problems facing IMMUNO; and the presence of an extensive newsmedia record covering all controversial aspects of this case, including Austrian court decisions in favor of defendants accused by IMMUNO of libelous statements about chimpanzee imports and housing conditions.

All this was known to NIH at the time the agreement with IMMUNO was signed and approved, through correspondence and via readily accessible media coverage. Since then, media coverage has expanded even further to include an ABC Television 20/20 newsprogram in the United States and a Central Independent Television program in England, both of which drew attention to connections between two private laboratories (IMMUNO and SEMA) and NIH. One can only conclude that NIH entered into and continued to promote these involvements knowingly and notwithstanding the public controversies, court proceedings, and violations of law.

A similar pattern of NIH failure to enforce compliance with federal animal welfare laws emerged in nearby Rockville, MD, at a private laboratory known as SEMA Inc., over the same period of time covered above. In this case of negligence and abuse, which has received as much media coverage in the United States as the IMMUNO case has in Europe, the SEMA laboratory, a facility supported wholly through public funds awarded by NIH, was revealed to have failed numerous inspections by the U.S. Department of Agriculture. One USDA report, dated 29 July 1987, long after SEMA had attracted widespread media criticism, revealed that government inspectors were personally harassed and prohibited from performing their duties. It concluded with a recommendation "that a violation of the Animal Welfare Act be initiated and that any reinspection be conducted only in pairs.".

As a federally funded laboratory that conducts experimentation with chimpanzees and other primates, SEMA must abide by the requirements of the U.S. Animal Welfare Act and the NIH standards of conduct in the Guide for the Care and Use of Laboratory Ani-

mals. The fact that SEMA had a long record of failure to comply with various laws, regulations and guidelines did not prohibit NIH from exonerating the laboratory. Asserting that SEMA is a private facility from which NIH cannot demand compliance, NIH representatives have repeatedly issued public disclaimers of responsibility for financial and research involvement with SEMA.

One case in point is a letter from NIH's Deputy Director for Extramural Research, Dr. Katherine Bick, to The Honorable Robert C. Byrd, Senate Majority Leader and key member on the Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies. That letter, dated 7 December 1987, 4 months after the USDA report recommending action on violations, stated that "there is no evidence that SEMA failed to comply with established laws, regulations or policies relating to the conduct of research involving nonhuman primates, including chimpanzees." Furthermore, subsequent attempts by ABC Television to interview NIH officials about this case were rejected, as were requests to enter SEMA in order to confirm NIH's assertions that the laboratory complied with federal animal welfare standards.

The NIH/IMMUNO and the NIH/SEMA partnerships have been described here in some detail to demonstrate that a pattern of deception, secret action, public denial, and other forms of irresponsible and cavalier behavior designed to mask noncompliance with both federal and international laws has been developing for some time at NIH and some of the laboratories with which the agency is affiliated. The evidence, moreover, suggests that NIH has been playing a leadership role in pioneering such tactics and in using privately owned laboratories as a convenient cover for partnerships where the risks of disclosure and negative publicity are minimized. It is within this climate of duplicity and secrecy that a third case, involving collaboration between an American research laboratory, White Sands Research Center (WSRC) in Alamagordo, NM, and the government of China, must be evaluated.

That NIH considered specific ways of gaining access to wild-born chimpanzees without becoming directly involved with international trade first emerged from an internal NIH memorandum, dated 11 March 1988, in which members of the AIDS Animal Model Committee discussed "the possibility of collaborating with African institutions to do chimpanzee research or to develop sources of these animals." A subsequent Associated Press interview with NIH Director James Wyngaarden confirmed this interest, identifying the USSR and Liberia as targets. To date, only the latter initiative has been confirmed. Other information indicates, however, that Zaire and South Africa are also under consideration. All these cases are currently under investigation.

Attention was initially drawn to WSRC's project in China by a report in the Alamagordo Daily News, dated 22 May 1988, describing a collaborative effort to "breed" chimpanzees at an "en-

dangered animals facility outside of Beijing." As that site currently contains no such colony, and indeed none is known to exist anywhere in China, a need to import chimpanzees for this project can be assumed. Indeed, CITES trade records show that China did initiate importations of chimpanzees in 1986, with Sierra Leone listed as the country of origin for several shipments exported by Japan. Sierra Leone imposed a total ban on chimpanzee exports in late 1978, but Japan (like Austria) nevertheless managed to purchase 50 infants from there since 1978 on a basis claiming dire need for biomedical research. Not dire enough, apparently, to prohibit Japan sending some on to China.. No CITES data on 1987-1988 imports by China are available as yet, but timing and other cicumstances suggest that these recent imports may be connected with the WSRC project. If further investigation confirms this, and also shows that NIH is financially or otherwise involved with WSRC, the agency's complicity in the affair will become a subject of major public controversy that is likely to embarrass both the United States and China.

One interesting link between WSRC and NIH has been traced to an attempted importation of 150 wild-born chimpanzees by WSRC's director, Dr. Frederick Coulston, in 1978. The permit application filed by Coulston with the U.S. Fish and Wildlife Service also identified "breeding" as a major justification, but failed to identify the source of the shipment. After the Environmental Defense Fund filed an objection to the application on 5 July 1978, revealing that the source as a dealer in Sierra Leone, the application was dropped. The same dealer, Franz Sitter, happens to have supplied all chimpanzees exported from Sierra Leone to both Austria and Japan since 1978, and is therefore the original source of the shipments that started entering China in 1986. It is also known that when this permit was under review by FWS in 1978, an NIH employee, Dr. Benjamin Blood, was providing support and guidance for Coulston's import application.

A further collaborative connection between WRSC and NIH has been revealed in a letter dated 20 May 1988, in which WSRC's Dr. William Cummins referred to the need to assemble NIH's Chimpanzee Task Force members to develop support for NIH's opposition to the FWS review on upgrading chimpanzees to endangered status. This subject has also been addressed in a draft letter dated 12 May 1988, appended to the 17 May 1988 minutes of NIH's AIDS Animal Model Committee.

In the few weeks since the WSRC affair emerged, NIH has made special efforts to deny any involvement with WSRC and with any other actions relating to acquisition of wild-born chimpanzees. An statement by Dr. Robert A. Whitney, Director of NIH's Office of Animal Care and Use and Chairman of NIH's Interagency Research Animal Committee, asserted that "NIH will not support action to obtain chimpanzees from the wild." The statement, mentioned in a 14 June 1988 Washington Post article on this subject, was not

dated or signed and appeared on plain paper without letterhead. Other verbal denials by NIH representatives have been issued with similar care to detail, and have no further standing as binding statements of official position or policy.

More to the point, NIH's assertions that the agency will not become involved in exploitation of wild chimpanzee populations, due to U.S. membership in CITES, clearly do not preclude forging alliances with private laboratories that act in contravention of CITES, ESA or AWA at their own risk. If this is done on the basis of incentives provided by NIH in confidential circumstances which can subsequently be denied, be those verbal, logistical or financial, as the record of NIH connections with IMMUNO and SEMA indicates, then NIH must bear the responsibility for the actions.

The WSRC currently has about 70 chimpanzees but is not known in professional circles as a breeding center. Many other American laboratories have better expertise and success in breeding chimpanzees. WSRC is a laboratory operated primarily for commercial purposes, and its advertised skills include commercial testing of "new drugs, insecticides, cosmetics, medical devices, etc." Only recently, since the China project was launched, has WSRC agreed to supply demographic data on its chimpanzee to the International Species Inventory System (ISIS), a facility heavily supported by NIH funds and charged with maintaining detailed computer records on captive chimpanzee breeding results. Registration with ISIS is a requirement for elligibility to receive federal funding from NIH.

WSRC's participation in ISIS also coincided with NIH AIDS Animal Model Committee discussions, held on 11 April 1988, concerning "the Freedom of Information liability of the ISIS system" and with NIH plans that "ISIS will soon become an independent, nonprofit organization which will not be subject to FOI." As the ISIS system currently handles all statistical information on the laboratory chimpanzee population of the United States, including the data used by NIH in 1986 to initiate its National Chimpanzee Breeding and Research Program, funded to date with about $10 million drawn from the government's AIDS budget, its inaccessibility to independent scientists would prohibit any outside assessment of progress with such programs.

The evidence concerning this case was sufficient to prompt Senator John Melcher to initiate an appropriations bill amendment "to prohibit the use of funds on projects entailing the capture of chimpanzees from the wild, and for other purposes." The materials provided in this testimony and the appended documents nevertheless raise more questions than can presently be answered. The story continues to unfold. It clearly merits further investigation, in the United States as well as in China, where the Ministry of Forestry apparently has jurisdiction over this project. Confirmation of the existence of the project, and of its

proposed establishment at an Endangered Species Breeding Center now being constructed in Daxiu County, has been obtained. Substantial American monies are said to be involved.

Questions need to be raised about many aspects of the WSRC project in addition to its potential links with NIH. These start with the issue of where the funds in support of the project are originating and how one relatively small commercial laboratory can afford to invest substantial funds in a project of uncertain commercial gain? There is also the questionable matter of where the chimpanzees needed for this project are to be obtained?

Additional questions must raised about the role of WSRC as a representative of the United States in a collaborative program with China, given the WSRC's inexperience in breeding chimpanzees and its lack of membership in our government's National Chimpanzee Breeding and Research Program.

Important questions also arise about the potential public-relations risks involved in conducting biomedical research or commercial testing of products at a Chinese center dedicated to breeding endangered species? And what consequences would there be on the international public-relations front if NIH assistance or collaboration with WSRC emerged? Even if WSRC proved to be acting on its own recognizance, as NIH now maintains, what are the risks of having an American laboratory induce a foreign government to import wild-born chimpanzees in order to breed them for sale to the United States?

Other leading questions concern the WSRC's sudden decision to join ISIS, and NIH's sudden concern that ISIS is an FOI liability after years of publicly accessible operation?

Questions can also be raised about why NIH has initiated so many denials, including misrepresentations of a private meeting with Dr. Jane Goodall on 1 July 1988, after which the Department of State formally notified the Fish and Wildlife Service that Dr. Goodall was satisfied concerning NIH's assertions of noninvolvement with WSRC's China project when in fact no such satisfaction was expressed in the discussion she held at the Hay-Adams Hotel with NIH's Dr. George Galasso, Chairman of the AIDS Animal Model Committee. Rejection of this false claim was registered with FWS for transmission to DOS and NIH, thereby involving several agencies in an embarrassing situation. And finally, perhaps the vigor of the actions and reactions expressed by NIH in connection with the China project is itself suggestive of the presence of something worthy of denial.

As citizen investigation of private laboratories and federal agencies is a difficult procedure, we respectfully suggest that this Subcommittee apply its authority to pursue inquiries in the directions outlined above.

STATEMENT OF MARK C. TREXLER AND LAURA H. KOSLOFF
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES
JULY 14, 1988

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today on the subject of the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). I am Mark C. Trexler of the World Resources Institute, a non-partisan policy research center located in Washington, D.C. Today, however, I am appearing on my own behalf as a doctoral candidate at the University of California at Berkeley's Graduate School of Public Policy, and on behalf of my colleague Laura H. Kosloff. Ms. Kosloff is a staff attorney at the Environmental Law Institute, also a non-partisan research center located here in Washington. Both Ms. Kosloff and I have spent the last several years studying the development and implementation of CITES both domestically and internationally.

CITES is often characterized as one of the most successful international environmental legal instruments in existence. Counting almost 100 countries as Parties, it has been a tremendous political and symbolic success. Over 600 governmental and non-governmental representatives attended the last Conference of the Parties (COP) held in Ottawa, Canada in July, 1987. Symbolic successes aside, however, many questions can be raised regarding what CITES is actually accomplishing as a wildlife conservation instrument. We therefore applaud the interest of the Subcommittee in investigating the Convention's implementation in the United States.

Before discussing CITES' implementation, it is important to set the context within which it functions. The international wildlife trade is an extraordinarily complex issue to attempt to regulate through governmental intervention. Even though CITES addresses just a very small part of the species extinction problem, it faces a task of staggering proportions. Millions of people make or supplement their living by exploiting wildlife resources that eventually enter the multi-billion dollar international wildlife trade. Most of these people have probably never heard of CITES. Millions more consume these products, once again often in complete ignorance of CITES. Thousands of species are traded on a regular basis; thousands more are traded intermittently. Most trade originates in developing countries whose trade control authorities are hard-pressed to control what is coming into their countries, much less what is going out. A single wildlife shipment often passes through several countries before arriving at its final destination. World trade patterns can shift rapidly in response to changing consumer demand, changing species availability, and changing laws.

It can take the wisdom of Solomon to sort out the resulting paper trail. Norman Boucher described the situation well in a 1983 article in the Atlantic magazine in which he states:

> Imagine a wildlife inspector for the Port of New York, then, faced with one of the 1,100 yearly shipments of spectacled-caiman skins and products. He must find the time to examine the spectacled-caiman shipment thoroughly. He must be able to tell the difference between an American-alligator handbag and a spectacled-caiman handbag. He must know the range of the spectacled caiman and verify that the animal exists in the country whose name appears on the export documents in his hand. He must know the wildlife laws of that country well enough to tell whether or not they allow the export of

> spectacled caiman. He must be familiar enough with the Endangered Species Act to know that two subspecies of spectacled caiman cannot be imported. Finally, he must be able to tell a handbag made of one subspecies of spectacled caiman from a handbag made from another subspecies of spectacled caiman. Smugglers figure the odds are in their favor.

Even Boucher's fatalistic description downplays the difficulty of the CITES enforcement task. Thousands of species are involved, each with their own subspecies and range countries. The legislation protecting wildlife is different in each of those countries. Few Parties employ specially-trained inspectors to check CITES shipments as does the United States. And if the accompanying customs documentation does not identify a wildlife shipment as such, it may never be checked at all. All this complexity often makes it difficult to prove a CITES offense, and the priority assigned to CITES prosecutions is likely to be low. Lastly, differentiating between legal and illegal trade at the consumer level is almost impossible; this makes demand-side trade-control strategies generally unworkable.

The environment within which CITES functions makes clear that even basic implementation of CITES poses major challenges. Indeed, there is no reliable evidence that CITES' implementation to date has significantly benefited the biological status of any species whose trade it proposes to control. Moreover, the very complexity of the implementation task makes it all too easy for implementation efforts to focus on "controlling the trade" while overlooking the issue of whether species are actually being benefited. There is even a school of thought within CITES, extending all the way to members of the Secretariat, that CITES is intended to be an instrument of economic regulation, and that its mission is simply to regulate the trade in listed species rather than to benefit them biologically. We believe this view misrepresents CITES' history and intent, and that any discussion of CITES policy and implementation must above all remember that the ultimate goal of the treaty is to biologically benefit species that are threatened or potentially threatened by the international wildlife trade.

Notwithstanding the obvious difficulties in implementing CITES for conservation ends, and the absence of data to suggest that it is a biological as well as a symbolic success, it is one of very few international legal instruments that is available to combat the serious problem of species extinctions. Although some people are now discussing a global biological diversity treaty, CITES will be on its own for years to come. It is therefore imperative that attention focus on making CITES as biologically effective as possible.

Unfortunately, we know very little about how CITES is being implemented by Party States, much less about its actual biological effectiveness. We do know that as a general rule CITES is implemented poorly around the world, that illegal wildlife trade is rampant, and that whole taxa, plants chief among them, are virtually ignored in implementation efforts. Ignorance about the procedures and effectiveness of national implementation extends even to the United States, notwithstanding its perceived status as the Party that best executes treaty obligations. No other country has as sophisticated a combination of a wildlife inspector network, limited ports of entry for wildlife products, and comprehensive legal sanctions.

Yet whether CITES is being effectively implemented by the United States remains an open question. For example, how much of the wildlife trade bypasses our domestic inspection system altogether? Tons of drugs are smuggled into the U.S. almost daily, notwithstanding an incredible commitment of resources to stopping them; it is a safe bet that many illegal wildlife products enter

the country the same way. The worldwide growth in containerized cargo shipments is a gaping hole in the CITES inspection system, since wildlife inspectors can only inspect a negligible number. How serious an impact do changes in Customs Service procedures, which reduce the number of random inspections of imports, have on U.S. CITES implementation? In the past, wildlife inspectors have relied upon these random inspections for many of their seizures.

Many questions can also be raised about CITES implementation with respect to shipments that are declared as wildlife and shipped through designated ports of entry. How much of this trade may have paperwork considered procedurally valid under CITES while still being detrimental to the species in question? How much of an inspector's time is taken up examining shipments of species for which the international wildlife trade poses no likely threat? Are the inspection and enforcement processes concentrating on the appropriate species? Is domestic enforcement of CITES violations sufficient to serve the intended deterrent effect?

These questions remain largely without answers, making it difficult to reach accurate conclusions regarding U.S. implementation of CITES. Accordingly, we encourage you to support World Wildlife Fund's (WWF's) plans to launch a major study of U.S. implementation of CITES. WWF's project will be a pathbreaking attempt to come to grips with the discrepancies between CITES' symbolic successes and the effectiveness of its implementation in individual Party States.

The Congress and the Fish and Wildlife Service (FWS), however, need not wait for the results of this study to take action to significantly improve U.S. CITES implementation. For example, steps can be taken to improve morale at the wildlife inspector level. These inspectors, who make up the backbone of U.S. implementation efforts, are poorly paid, are provided with few opportunities for advancement within FWS, are given virtually no opportunity to participate in the formulation of CITES policy, and are kept in the dark about CITES implementation around the U.S. and around the world. Even steps as simple as publishing a newsletter for the wildlife inspectors and including inspectors in U.S. delegations to Conferences of the Parties and other CITES meetings would boost inspector morale and motivation. Their participation in the policymaking process would also improve CITES as a whole, for most CITES policy is now made by individuals who have never faced the difficulties of frontline CITES implementation.

Administrative efforts to decentralize FWS operations are also of paramount importance to domestic implementation efforts. Wildlife ports of entry and the FWS inspectors and agents located there, for example, are under the control of the regional FWS office, rather than that of the FWS Division of Law Enforcement in Washington. A CITES-related directive from Washington might first go to Portland, then to Sacramento, and finally to the port of entry in San Francisco. This contributes to the isolation felt by FWS staff at the ports of entry, who have little direct contact with the rest of the CITES enforcement infrastructure. The interest and priorities of the regional FWS bureaucracies, which are likely to be overwhelmingly concerned with domestic wildlife issues, will rarely focus on implementing CITES. Thus, staff at the ports of entry may feel powerless to get the political and financial support needed to do their job, while the FWS Law Enforcement Division may feel powerless in its attempts to coordinate and direct the actions and priorities of the ports of entry. It is not uncommon for Washington officials to express frustration about the lack of implementation of their directives at ports of entry, and for inspectors at those ports simultaneously to express frustration about their inability to get direction and authority from Washington. We strongly encourage the Subcommittee to investigate ways in which the chain of authority

within the U.S. implementation infrastructure could be made more conducive to effective CITES implementation.

These are just two of the many organizational and substantive implementation issues that we could mention. You will no doubt hear about additional ones from other members of this panel, and we have included as part of our written testimony an article that more comprehensively introduces the topic of U.S. CITES implementation. We would like to emphasize, however, that improving U.S. implementation should not be seen as synonymous with simply "cracking down" on the wildlife traders whose shipments come through the designated ports of entry. The wildlife trade is already particularly susceptible to "regulatory unreasonableness" given the emphasis of the implementation process on the presentation of "proper" paperwork. Hundreds of government agencies around the world produce CITES paperwork; it is inevitable that many permits will be technically deficient in some way. Regardless of a trader's good faith, and irrespective of any absence of biological detriment associated with a given shipment, a shipment's paperwork may arrive in the U.S. with an incorrect date, an inappropriately whited-out entry, or some other "irregularity."

In response to a directive from Congress to crack down on the illegal wildlife trade, and in the absence of increased resources and better guidance to enforcement staff, such shipments will bear the brunt of a crackdown. It is much easier to find obvious but often relatively harmless permit irregularities than it is to identify and stop those shipments that have superficially valid paperwork, but which might actually be detrimental to the species in question. In one example we witnessed at a port of entry, a shipment arrived containing several thousand small ivory trinkets. While the permit appeared valid, the number of items listed on the invoice accompanying the shipment slightly exceeded the number of items listed on the permit. Notwithstanding the complete insignificance of the potential discrepancy to the survival of African elephants, or to efforts to identify and stop the illegal ivory trade, the inspector told us he would spend several hours precisely inventorying the shipment to determine if the discrepancy was real, thereby making the shipment "illegal."

Such behavior is indicative of inspector frustration and ignorance over how to best pursue CITES' policy goals. Unfortunately, it can also threaten the cooperation of legitimate wildlife traders in achieving these goals. As in any regulatory program, CITES' success relies on the goodwill and law-abiding nature of most of the regulated population, in this case wildlife traders. Alienating law-abiding traders through unreasonable inspection practices can not only generate a political backlash against CITES, but can undercut the practical ability of the inspection infrastructure to target and stop the truly detrimental parts of the trade.

Rather than simply ordering a crackdown on the "illegal" wildlife trade, what the U.S. really needs to do is to re-assert its leadership role in formulating and implementing CITES policy. CITES currently faces an acute leadership crisis, and the treaty is suffering as a result. Moreover, increasing the resources devoted to U.S. implementation of CITES is not enough when international CITES policy development and implementation are as faulty as they are.

U.S. leadership is needed at both the organizational and substantive levels. The budget of the CITES Secretariat is only a fraction of what is needed to conduct the appropriate biological research and implementation activities to make CITES truly effective. In recent years, the U.S. has contributed to CITES' budgetary problems through the timing and size of its contributions. As a result, the Secretariat has had to devote much of its attention to fundraising activities, and Conferences of the Parties

have had to focus unduly on purely budgetary matters. These activities dilute the already limited time and expertise available for achieving CITES' species conservation goals.

Another organizational issue involves the Secretariat itself. Both NGOs and governments have raised many questions about the Secretariat's priorities and practices in carrying out its role. The recent departure of key members of the Secretariat staff suggests that a bad situation may be worsening. Parties such as the U.S. must take a more meaningful role in monitoring the activities and performance of the Secretariat, and must work with the United Nations Environment Programme to keep the Secretariat on track. While an institution such as the CITES Secretariat should ideally have as much autonomy and authority as possible, it does not appear that the Secretariat is currently ready for such delegation.

There are also many substantive issues of concern. The CITES Appendices have grown at an alarming rate in recent years. They now contain at least 24,000 species, and possibly as many as 40,000. Yet there are only a relatively small number of species, probably less than 100 for fauna and 200 for flora, that trade controls can realistically help. More and more higher taxa are being added to the Appendices, both supplementing and often subsuming previous species-specific listings. Virtually all listed plants and more than 2000 species of fauna are listed as part of higher taxa, even though many species in these higher taxa are not actually threatened or potentially threatened by trade. For example:

- The entire primate order, encompassing some 200 species, is listed on Appendix II; several taxa, encompassing several dozen species, are listed on Appendix I. One-third of primate species are considered endangered, vulnerable, or rare, but habitat loss is the single greatest threat. Less than a third of the world's primate species are traded at all, and that trade concentrates on fewer than 10 species.

- Only one of 13 fur seals listed on the Appendices is traded at significant levels.

- While some 30 psittacine species are listed on Appendix I, and the remaining 300 or so species are on Appendix II, only 9 or so reportedly are endangered by trade. Up to 30 more may be detrimentally affected by trade to any significant extent. Habitat loss is usually a major threat.

- Only one species of black coral makes up most of the international trade, but 150 species are listed on Appendix II.

- There is little trade in the 300 or so species of hummingbirds that were listed on Appendix II in Ottawa last year, and very little likelihood of species endangerment.

Parties are not adhering to the requirements of the Convention or to the rules and procedures for amending the Appendices. The listing process is becoming more overtly politicized, and scientific information is not being used even where it is available. Mass listings of this sort were never envisioned by the drafters of CITES.

These trends in Appendix development have serious organizational and financial implications. The constant stream of Appendix amendment proposals, whether adopted or not, saps energy and resources from activities likely to be more important to achievement of CITES' goals. Preparation of the proposals submitted to each Conference can involve several person-years of work. The Secretariat, some Parties, and some NGOs undertake extensive reviews of the proposed amendments in preparation for each COP. At the COP, representatives spend many days in committees and in

plenary sessions reviewing Appendix proposals. A great deal of the "policy time" devoted to CITES by all concerned thus focuses on Appendix amendment proposals. This is counterproductive when implementation of the treaty for species already listed is as poor as it is. The listing on the Appendices of species that are in trade but are not detrimentally affected by it imposes regulatory burdens on traders, and undermines CITES' scientific credibility.

The most important implications of Appendix growth, however, are for CITES enforcement. The workload of permitting agencies that are required to make no-detriment findings is increased, and the resources available for implementing the Convention for each individual species are reduced. A customs official responsible for verifying the paperwork for thousands of species in trade will inevitably face a more difficult task than if just a few hundred were regulated, and will have less time to spend on each shipment. Accordingly, it becomes harder and harder to focus on the species of actual conservation concern. With relatively few exceptions (certain plants for example), additional listings should not be viewed as a conservation priority.

Overall, the Convention is becoming more difficult to implement properly, rather than easier as one would expect if Parties were analyzing and learning from experience. If CITES is not to become even more difficult to implement than it already is, countries such as the U.S. must take a leadership role in restoring the Convention's scientific integrity. This must involve both sponsoring research and convincing other Parties of the need to streamline rather than complicate treaty enforcement.

Another issue in need of concerted leadership by Parties such as the U.S. involves the issuance of CITES permits. CITES' entire monitoring and enforcement structure rests upon the validity of the permits issued by wildlife exporting countries. These permits are supposed to certify that a shipment will not be detrimental to the survival of the species in the wild. However, no-detriment findings by definition need to be timely and population-specific; yet biological surveys don't exist even at the national level for most species, much less at the population level.

CITES Parties often admit that few legitimate no-detriment findings precede the issuance of export permits, particularly for Appendix II species. Thus, it is difficult to determine whether any single CITES transaction, regardless of whether it is accompanied by a CITES permit, is likely to prove detrimental to the species involved. There has been a reluctance to cast the first stone over the issue in the diplomatic COP environment, due to the practical difficulties facing exporting countries in performing the no-detriment reviews, and because no Party can claim to be without fault in implementing CITES. Exporting countries defend their performance on the basis of limited resources, and question the point of increasing their own efforts to control trade when importing countries are perceived as being so willing to allow illegal trade. Conversely, importing countries argue that if exporting countries aren't going to police the export of their own wildlife, they cannot expect importers to fill the gap.

Both of these arguments have merit; unfortunately, CITES gets caught in the middle. The great majority of CITES paperwork probably has no biological validity, even while monitoring and enforcement procedures are made more and more complex through CITES Resolutions and treaty interpretation. Ignoring this basic fact does little to promote CITES' species conservation goals.

The growth of the Appendices and the failure to make no-detriment findings are just two of the fundamental problems facing CITES. Failure to address these and other CITES issues at the international level can only adversely influence the effectiveness of

national implementation efforts, irrespective of the domestic resources devoted to the task. The growing Appendices makes the task of U.S. wildlife inspectors less and less tenable. Indeed, the FWS must develop mechanisms by which to focus inspector effort on those species most likely to be benefited through effective implementation of CITES' controls. Moreover, domestic CITES implementation must in some way account for the likely absence of legitimate no-detriment findings.

Mr. Chairman and members of the Subcommittee, as current Chair of the CITES Standing Committee the U.S. is in an ideal position to pursue progress on these and other fronts. It is the responsibility of the U.S. as one of the primary authors of CITES to try to bring the treaty back on course. Improving the infrastructure and capabilities underlying U.S. implementation of the Convention can significantly help the treaty to live up to its species conservation potential.

Thank you.[1]

---

[1] Portions of our research were made possible through the assistance of the Agnese Lindley Foundation, and through general support funding from the Environmental Law Institute. We gratefully acknowledge their assistance.

NEWS & ANALYSIS

COMMENT

The Convention on International Trade in Endangered Species: No Carrot, But Where's the Stick?

by Laura H. Kosloff and Mark C. Trexler

Editors' Summary: Perhaps the most sinister environmental threats include those that are least perceptible. One such threat is the large scale extinction of biological species, with ominous implications for a shrinking gene pool and multiplier effects throughout the food web whenever key species are lost. This Comment analyzes one of the principal international responses to this threat, the Convention on International Trade in Endangered Species. Although the Convention is widely hailed as a success, the Comment points out that it imperfectly addresses the root causes of species extinction, and the evidence of effective implementation of even the limited mission of the Convention is spotty. The Comment reviews the United States' implementation of the Convention, principally through the Endangered Species Act, and concludes that much more analytical work and enforcement effort is needed both in the United States and abroad.

Environmental issues have been the topic of many international agreements, including polar bear conservation,[1] migratory bird conservation,[2] and whaling.[3] More recently, attention has begun to focus on even broader issues such as acid rain,[4] ozone depletion,[5] and genetic resources.[6] Yet one agreement, argued to be one of the most successful environmental conventions, remains relatively unknown even to many environmental attorneys.

Laura H. Kosloff is an attorney and an Associate Editor on the *Environmental Law Reporter*. Mark C. Trexler is a doctoral candidate at the Graduate School of Public Policy at the University of California at Berkeley and has served as a consultant to several international organizations on genetic resources conservation and the implementation of wildlife conservation treaties.

1. Agreement on the Conservation of Polar Bears, Nov. 1, 1976, T.I.A.S. No. 8409, ELR STAT. 40317 [hereinafter Polar Bear Convention].

2. *See, e.g.*, Convention for the Protection of Migratory Birds, Aug. 16, 1916, United States-Great Britain, 39 Stat. 1702, T.S. No. 628; Convention for the Protection of Migratory Birds and Game Mammals, Feb. 7, 1936, United States-Mexico, 50 Stat. 1311, T.S. No. 912; Convention for the Protection of Migratory Birds in Danger of Extinction and their Environment, Mar. 4, 1972, United States-Japan, 88 Stat. 190, 25 U.S.T. 3329, T.I.A.S. No. 7990, ELR STAT. 40344. *See also* Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Feb. 2, 1971, 11 I.L.M. 963.

3. International Convention for the Regulation of Whaling, Dec. 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849, 161 U.N.T.S. 72.

4. Acid rain has been a subject of dispute between the United States and Canada for quite some time. In early April 1987 Canadian Prime Minister Brian Mulroney proposed that an accord between the two countries be negotiated on the subject. 17 CURRENT DEV. (BNA) 2078 (Apr. 10, 1987). Acid rain has, of course, been a topic of concern in Europe for years. *See generally* G. WETSTONE & A. ROSENCRANZ, ACID RAIN IN EUROPE AND NORTH AMERICA: NATIONAL RESPONSES TO AN INTERNATIONAL PROBLEM (1983); Wetstone, *Acid Rain in Europe and North America: U.S. Lags in Commitment to Control*, 13 ELR 10096 (Apr. 1983). Members of Congress have also attempted to pass unilateral measures to decrease United States' emissions that contribute to the international acid rain problem. *See, e.g.*, S. 321, 100th Cong., 1st Sess., 133 CONG. REC. S865, 17 ELR 10096 (daily ed. Jan. 16, 1987); S. 316, 100th Cong., 1st Sess., 133 CONG. REC. S849, 17 ELR 10086 (daily ed. Jan. 16, 1987); S. 300, 100th Cong., 1st Sess., 133 CONG. REC. S650, 17 ELR 10085-86 (daily ed. Jan. 6, 1987); S. 95, 100th Cong., 1st Sess., 133 CONG. REC. S359, 17 ELR 10085 (daily ed. Jan. 6, 1987). Several of these bills are quite similar to bills introduced in the 99th Congress.

5. Recent studies have indicated that the breakdown of atmospheric ozone as a result of human activities may cause irreversible climate changes in the not too distant future, perhaps as soon as the end of the century. WORLD RESOURCES INST., WORLD RESOURCES 1986 at 171 (1986); WORLDWATCH INST., STATE OF THE WORLD 1987 at 161 (1987). As a result of the growing concern, attempts have been made to reach an international accord to protect the atmosphere as a resource and to limit the production of chemical chlorofluorocarbons (CFCs), commonly recognized as a cause of the reduction in stratospheric ozone. The Vienna Convention for the Protection of the Ozone Layer, the first international instrument to protect ozone, was signed in 1985, but failed to set such limits in the text of the Convention itself. Subsequent working groups have been attempting to work out protocols. *See, e.g., CFCs: Preparation of Protocol*, 17 ENVTL. POL'Y & L., Jan./Feb. 1987, at 11. Several bills aimed at taking unilateral measures to protect the ozone layer have recently been introduced in Congress. S. 571, 100th Cong., 1st Sess., 133 CONG. REC. S2288, 17 ELR 10131 (daily ed. Feb. 19, 1987) (bill to phase out within six years the production of 95 percent of certain CFCs and ban the importation of suspect CFCs within 12 months); S. 570, 100th Cong., 1st Sess., 133 CONG. REC. S2282, 17 ELR 10131 (daily ed. Feb. 19, 1987) (bill to reduce CFC production levels and develop alternative technologies).

6. Genetic variability within species is as valuable to species' survival as variability among species. The loss of genetic resources of both kinds has been a source of increasing concern. Although much of

That agreement, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),[7] sets as its goal the prevention of the endangerment or extinction of species that could result from international trade in those species and their products.

For some species and products such as sea turtles, rhinoceros horn, and Asian elephant ivory, the trade is overwhelmingly illegal. For many other species and products, there are large components of both legal and illegal trade; examples here include African elephant ivory, parrots, and orchids. For items such as artificially propagated plants, ranched furs, and water buffalo horn jewelry, most shipments are legal, although there are exceptions. With thousands of plant and animal species in trade, a worldwide declared value of at least $5 billion is involved;[8] the U.S. market accounts for up to one-third of that value.[9]

Besides its diversity, the sheer volume of this trade is astounding. A minimum of 500,000 live parrots and 10 million raw reptile skins, and 10 million cacti enter into international trade each year, along with over 500 tons of ivory, 50 million furs, and 350 million ornamental fish.[10] Moreover, there is evidence that trade volume is growing in response to soaring demand.[11] Given the volume of the trade, and its tendency to involve exotic and uncommon species, the biological threat to species posed by this trade cannot be discounted. When combined with the even more devastating impacts of worldwide habitat loss, it appears that millions of species will become extinct in coming decades.[12]

the focus has been on the genetic base of world food crops, the genes of wild plant and animal species can also be of significant value. The commercialization of the genetic engineering industry may, if environmental concerns can be adequately addressed, increase the potential value of certain species by enabling researchers to enhance genetic traits that are useful in medicine and agriculture. For a discussion of the economic value of particular genetic attributes, see N. Myers, The Sinking Ark 57 (1979); and P. Ehrlich & A. Ehrlich, Extinction: The Causes and Consequences of the Disappearance of Species 53 (1981). For a general introduction to the science and politics of genetic resources conservation, see 16 IUCN Bull., Nos. 1-3, Jan./Mar. 1985 (special issue, M. Trexler ed.).

7. Mar. 3, 1973, 27 U.S.T. 1087, T.I.A.S. No. 8249, 993 U.N.T.S. 243, ELR Stat. 40336.

8. Calculating the value of the wildlife trade is difficult for several reasons. First, one must consider whether products such as ranched furs and artificially propagated plants should be included. Second, the dollar value of wildlife at the time of import often bears little relationship to the retail value. The World Wildlife Fund has estimated the declared value of the international wildlife trade to be at least $5 billion. World Wildlife Fund, Factsheet: World Trade in Wildlife (Dec. 1986). If this is in fact the case, the actual retail value would be considerably higher.

9. Interview with Ginette Hemley, Director, Trade Records Analysis of Fauna and Flora in Commerce (TRAFFIC)—U.S.A., in Washington, D.C. (June 8, 1987).

10. World Wildlife Fund, Factsheet: World Trade in Wildlife (Dec. 1986).

11. In recent decades, advances in the global transportation infrastructure, general affluence, and the technologies used to exploit wildlife have set the stage for major increases in the trade of many species, particularly live animals such as tropical fish and reptiles.

12. The combined impacts of habitat destruction and wildlife trade are particularly serious. Through the loss of habitat, species become much more vulnerable to exploitative pressures. The clearing of tropical rain forests for agriculture also makes it much easier to reach and exploit many wildlife species. *See generally* N. Myers, *supra* note 6; P. Ehrlich & A. Ehrlich, *supra* note 6; H. Koopowitz & H. Kaye, Plant Extinctions: A Global Crisis (1983). Of the estimated 10 million species of plant and animal wildlife in the world today, 5 to 20 percent may become extinct over the next 20 to 50 years. U.S. Agency for International Development, A Report on Progress in Conserving Biological Diversity in Developing Countries, FY 1986 (Feb. 1987) (report to Congress in fulfillment of §119 of the Foreign Assistance Act).

This Comment analyzes the international response to the problem of species extinctions, as embodied in CITES, and then examines particular elements of the United States' implementation of the treaty's requirements. Although the United States cannot implement CITES alone, it is considered to have the best implementing infrastructure. Problems facing this country's implementation efforts, therefore, are likely to be magnified in most other nations.

The International Response: CITES

CITES Regulatory Framework: How It Functions

CITES is in many respects a standard instrument of social regulation intended to bring about "responsible" behavior in situations where it might not otherwise have occurred.[13] Although in effect a statute applied to the international arena, CITES does not create a category of "international crimes" or prescribe specific sanctions for violations of CITES; this is left to national laws and regulations. What CITES does establish is a system of permit requirements, implemented by each wildlife-exporting and wildlife-importing Party. The permits are designed to prevent international trade in species for which such trade presents a significant threat, and to prevent such trade from becoming a significant threat in the future to species currently able to sustain such exploitation. Bowing to international legal norms concerning national sovereignty, the Convention addresses only the aspects of wildlife trade that transcend national boundaries; what occurs completely within the borders of a Party is not subject to international debate.[14]

The Appendices

CITES categorizes into three Appendices those species for which trade creates real or potential biological concern. Each Appendix is subject to particular permitting requirements. Appendix I lists species threatened with extinction that are or may be affected by international

13. Social regulation efforts usually include three elements: (1) a body of governmentally adopted rules, or standards prescribing "responsible" behavior; (2) a cadre of enforcement agents and auditors to monitor, and thereby to deter, deviations from these rules or standards; and (3) a schedule of sanctions to be applied to persons or organizations who deviate from the rules and standards to an unacceptable degree. Bardach, *Social Regulation as a Generic Policy Implement*, in The Tools of Policy (L. Salomon & M. Lund eds., forthcoming Urban Inst. Press).

14. The preamble to CITES specifically states that "peoples and States are and should be the best protectors of their own wild fauna and flora." CITES, *supra* note 7, Preamble, ELR Stat. 40336. In line with this approach, attempts to "interfere" with the internal wildlife management practices of Parties have been firmly resisted. *See, e.g.*, CITES Secretariat, *Summary Report of the Plenary Session, Statement by Canadian Delegation*, Plen. 5.8, in Proceedings of the Fifth Meeting of the Conference of the Parties at 117, 122 (1986) [hereinafter Proceedings of the Fifth Meeting]. A rare exception can be seen in a resolution passed by the Parties relating to the destruction of plant habitat and recommending that the in situ protection of Appendix I plants be considered a national and international obligation. *Improving the Regulation of the Trade in Plants*, Conf. 5.14, in Proceedings of the Fifth Meeting, *supra*, at 59. Adoption of this Resolution can probably be explained by the fact that plants are of so little interest to the majority of the Parties to CITES that its language and adoption may have gone unnoticed.

trade.[13] Commercial international trade in Appendix I species is prohibited.[14] For noncommercial trade, any shipment involving a plant or animal from Appendix I requires an export permit from the country of origin and an import permit from the country of destination certifying that the specimen has been taken in accordance with the treaty's requirements.[15]

Appendix II lists species that may become threatened with extinction, even if they are not threatened currently, if trade in the species is not held to levels consistent with the species' biological carrying capacity.[16] Commercial trade in Appendix II species is allowed, but conditions are imposed. Any shipment involving an Appendix II species requires an export permit from the country of origin certifying that the transaction will not have adverse impacts on the biological status of the species.[17] In theory, the wild populations of Appendix II species are to be carefully monitored for potential adverse impacts resulting from their exploitation for international trade.

Appendix III includes species that an individual Party to the Convention has identified as being subject to regulation within its borders for the purpose of controlling exploitation of the species, and for which the Party has determined that international cooperation is important to its achievement of such controls.[18] Trade in Appendix III species requires an export permit certifying that the country's authorities have determined that the specimen was taken in accordance with the country's wildlife laws.[19]

Additions to either Appendix I or II require, in theory, reliable biological evidence that the species is or may be threatened (for Appendix I species) or is likely to become threatened (for Appendix II species) by trade; deletions from the lists require evidence that trade in the species no longer presents the threat of extinction.[20] Additions and deletions are accomplished by a two-thirds vote of the state Parties at the biennial Conferences of the Parties.[21]

Exemptions

Although on their face the three CITES Appendices establish a cohesive regulatory framework, in practice a series of exceptions to the treaty's general provisions make interpretation and enforcement much more complex. For example, through Article VII, trade restrictions do not apply to shipments in transit through the territory of a Party.[24] Specimens are not covered by the import and export permit requirements if they (1) were acquired prior to the species' listing on the CITES appendices or a government's becoming a Party;[25] (2) are personal or household effects;[26] (3) are animal specimens bred in captivity or plant specimens that are artificially propagated;[27] or (4) are noncommercial loans or exchanges between scientific institutions.[28]

In addition, the treaty also allows a Party to enter a reservation at the time a species is listed on an appendix.[29] The entering of a reservation in effect makes a Party a non-Party for the purposes of that species.[30]

15. CITES, *supra* note 7, art. II, para. 1, ELR STAT. 40336. Currently, some 700 animal species and several thousand plant species are listed on Appendix I. Not all of these plant species are actually endangered; due to the difficulty of differentiating between closely related species, entire genera, such as the cactus genus *Turbinocarpus*, have been placed on Appendix I.

16. *But see infra* discussion of exemptions at text accompanying notes 24-31.

17. CITES, *supra* note 7, art. III, para. 2, 3, ELR STAT. 40336. A specimen is defined as any animal or plant, whether alive or dead, or any readily recognizable part or derivative of such animal or plant. *Id.* art. 1, para. (b), ELR STAT. 40336.

18. *Id.* art. II, para. 2(a), ELR STAT. 40336. Some 40,000 species are listed on Appendix II, but this number is somewhat deceiving; most of these are entire genera of plants, such as cacti and orchids. Many individual listed species may not be threatened by trade at all, but are listed because of the difficulty of distinguishing them from species that are in fact threatened.

19. *Id.* art. IV, para. 2, ELR STAT. 40336. Specifically, the relevant governmental agencies in the country of origin are supposed to determine that:

> (a) export will not be detrimental to the survival of the species;
> (b) the particular specimen was not obtained in contravention of the country of origin's wildlife protection laws; and
> (c) live animals will be shipped so as to minimize the risk of injury, damage to health, or cruel treatment.

Id.

20. *Id.* art. II, para. 3, ELR STAT. 40336. Appendix III has been described as "an internationalized Lacey Act." M. BEAN, EVOLUTION OF NATIONAL WILDLIFE LAW 328, n. 45 (1983).

21. CITES, *supra* note 7, art. V, para. 2, ELR STAT. 40337.

22. The development of specific criteria to be used in the listing or delisting of species on the Appendices was one of the first orders of business at the first biennial Conference of the Parties in 1976. *See* CITES Secretariat, *Criteria for the Addition of Species and Other Taxa to Appendices I and II and for the Transfer of Species and Other Taxa From Appendix I*, Conf. 1.1, in PROCEEDINGS OF THE FIRST MEETING OF THE CONFERENCE OF THE PARTIES 31 (1977) [hereinafter PROCEEDINGS OF THE FIRST MEETING]; *Criteria for the Deletion of Species and Other Taxa From Appendices I and II*, Conf. 1.2, in PROCEEDINGS OF THE FIRST MEETING, *supra*, at 33. Notwithstanding these early actions, the issue has repeatedly caused conflict. A significant reason for this is that a number of species were originally listed on Appendix I at the plenipotentiary conference in 1973 at which the treaty was signed without firm biological data to support the listing. Attempts to have these species removed from the Appendix have been thwarted by the continuing absence of data.

23. CITES, *supra* note 7, art. XV, ELR STAT. 40339. The original lists were determined by the Plenipotentiary Conference in Washington in 1973. The Convention also allows a postal vote to be taken in between meetings of the Parties. *Id.* Noncontroversial listings have been added by this method several times. *See, e.g., Report of the Secretariat*, Doc. 5.8, in PROCEEDINGS OF THE FIFTH MEETING, *supra* note 14, at 265, 268 (1986) (giant panda).

One leading wildlife legal expert has concluded that the establishment of the appendices was CITES' "most significant innovation," since it created a unique scaling system for degrees of danger to a species and a regulatory system to go along with this. M. BEAN, *supra* note 20, at 325. Unfortunately, political pressures and an absence of reliable biological data have created a situation in which the scientific legitimacy of the Appendices can be questioned.

24. CITES, *supra* note 7, art. VII, para. 1, ELR STAT. 40337.

25. *Id.* para. 2, ELR STAT. 40337.

26. *Id.* para. 3, ELR STAT. 40337.

27. *Id.* para. 4, ELR STAT. 40337.

28. *Id.* para. 6, ELR STAT. 40337.

29. *Id.* art. XXIII, ELR STAT. 40340. A Party may enter a reservation during the 90 days after the date the species is listed on the appendix. *Id.* art. XV, para. 3, ELR STAT. 40339 (amendments to Appendices I and II), art. XVI, para. 2, ELR STAT. 40339 (amendments to Appendix III). Reservations have generally been taken on Appendix I species involving valuable resources such as sea turtles and crocodiles.

30. For a discussion of some of the difficulties created by the CITES reservation provision, see Comment, *Reservations Regarding the Reservations Clause*, 14 CORNELL INT'L L.J. 430 (1981). Reservation provisions are not uncommon in international conservation instruments. They are considered a necessary component in international law to reassure a country that at a fundamental level it cannot be forced to take measures it does not want to take. One commentator concludes that a reservation provision results in a situation where "political bargaining based on larger considerations of policy and power would be all-important in actual decisionmaking." M'Gonigle, *The "Economizing" of Ecology: Why Big, Rare Whales Still Die*, 9 ECOLOGY L.Q. 119, 135 (1980).

The pattern of exceptions and reservations established under CITES has caused the Parties considerable conflict, as the Convention does not provide precise definitions of any of the exemptions, or of how the implementation of these exemptions can be reconciled with the achievement of the primary goals of the treaty.[31] Pressures to allow the exploitation through international trade of national wildlife resources have forced heated debate on the interpretation and implementation of the Convention's sometimes vague provisions.

Individual Party Implementation

CITES does not aspire to be a supranational agreement under which member nations have yielded aspects of their individual sovereignty.[32] Although the treaty establishes a permanent full-time Secretariat for information gathering, coordination, and general administration, it creates no treaty-wide enforcement structure.[33] The treaty requires Parties to designate at least one "Management Authority" to grant import and export permits,[34] and at least one "Scientific Authority" to determine whether trade in a particular species is detrimental to its survival.[35]

Many observers consider CITES' requirement that every Party designate some entity as a Management Authority to implement the Convention as a success in itself. By specifically allocating such a responsibility, governmental attention is, presumably, more likely to remain focused on implementing the policy.[36] Some developing countries never had any government body responsible for wildlife management prior to CITES. Even if implementation of CITES itself in these countries is abysmal,[37] the very fact that some agency has been designated as having that responsibility might, it is argued, be valuable in furthering the long-term goals of conservation.

Beyond the requirements CITES imposes on Parties to establish an administrative infrastructure and adhere to specific permitting procedures, the treaty requires that Parties enforce its provisions and penalize violations,[38] maintain complete records of their trade in CITES species, and report annually to the Secretariat on their implementation of the Convention.[39]

Participation of Nongovernmental Organizations

One CITES provision that was extremely unusual when drafted was the degree to which nongovernmental organizations (NGOs) are permitted to participate in CITES' ongoing administration and enforcement. NGOs, particularly the International Union for the Conservation of Nature (IUCN), were in fact pivotal in the drafting of CITES. The Convention not only explicitly permits NGOs to participate as nonvoting observers at the biennial Conferences of the Parties (COPs), but they also receive, as registered observers, all documentation pertaining to the COPs.[40] NGOs may attend plenary sessions and most committee meetings and may lobby for their favored positions on various issues.[41] Even beyond formal participation at the Conferences, NGOs have contributed vast amounts of time, effort, and financial resources to CITES for its enforcement and implementation.[42] Beyond serving as infor-

The text of the Convention does not require a country holding a reservation on an Appendix I species to submit trade documentation for the species. However, the Parties have resolved that Parties holding Appendix I reservations should nevertheless prepare and submit trade documentation as if the species were on Appendix II. CITES Secretariat, *Effects of Reservations*, Conf. 4.25, in PROCEEDINGS OF THE FOURTH MEETING OF THE CONFERENCE OF THE PARTIES 81 (1984) [hereinafter PROCEEDINGS OF THE FOURTH MEETING].

31. *See, e.g.*, *Definition of "In Transit,"* Conf. 4.10, in PROCEEDINGS OF THE FOURTH MEETING, *supra* note 30, at 53; *Definition of "Pre-Convention Acquisition,"* Conf. 5.11, in PROCEEDINGS OF THE FIFTH MEETING, *supra* note 14, at 52; *Control of Tourist Souvenir Specimens*, Conf. 4.12, in PROCEEDINGS OF THE FOURTH MEETING, *supra*, at 57; CITES Secretariat, *Ranching*, Conf. 3.15, in PROCEEDINGS OF THE THIRD MEETING OF THE CONFERENCE OF THE PARTIES 65 (1982) [hereinafter PROCEEDINGS OF THE THIRD MEETING].

32. Under the Treaty of Rome, member countries of the European Economic Community are bound to adhere to the rules of the Community in certain areas.

33. The establishment of a professional full-time staff was a fairly unusual provision in an international environmental instrument at the time CITES was drafted. One commentator has concluded that the authority granted to the CITES Secretariat to gather information on the Convention's operation, investigate enforcement problems, and provide scientific data has been instrumental in making the Secretariat an effective organization. M'Gonigle, *supra* note 30, at 214; *see also* S. LYSTER, INTERNATIONAL WILDLIFE LAW 277 (1985). Conventions adopted since CITES have followed its lead, citing the example of CITES Secretariat as a reason for that treaty's "success." *See, e.g.*, Convention on the Conservation of Migratory Species of Wild Animals, June 23, 1979, art. IX, 19 I.L.M. 15, [hereinafter Bonn Convention, after city in West Germany where it was signed].

34. CITES, *supra* note 7, art. IX, para. 1(a), ELR STAT. 40338.

35. *Id.* para. 1(b), ELR STAT. 40338.

36. It is common regulatory practice to establish new bureaucratic entities for purposes of implementing major new legislative initiatives. This makes it possible to put into place a cadre of individuals dedicated to the carrying out of the new legislative mandate, something that might not occur if the implementing responsibility were simply added to the priorities and programs of an existing institution. In the case of CITES, the intent is similar. In most cases, however, implementing responsibilities have been assigned to existing organizations, where they must compete with other programs and priorities. In the United States, the Fish and Wildlife Service is charged with CITES implementation; in Switzerland, it is the Federal Veterinary Office.

37. Although a number of Parties have implemented CITES exceedingly poorly, several in particular have been singled out by the CITES Secretariat and the Parties for public castigation. These include Bolivia, Japan, and the United Arab Emirates. Only Bolivia, however, has been censured by the Parties in a formal Resolution. *See Implementation of the Convention in Bolivia*, Conf. 5.2, in PROCEEDINGS OF THE FIFTH MEETING, *supra* note 14, at 38; *Report of the Secretariat*, Doc. 5.8, in PROCEEDINGS OF THE FIFTH MEETING, *supra*, at 265.

38. CITES, *supra* note 7, art. VIII, para. 1, ELR STAT. 40339. The language of the treaty does not specify the sanctions to be employed, just that they be "appropriate." Understandably, this has led to wide variations in the sanctions available under the laws of different countries.

39. *Id.* art. VIII, para. 7, ELR STAT. 40338.

40. *Id.* art. XI, para. 7, ELR STAT. 40338. *Cf.* the International Convention for the Regulation of Whaling, *supra* note 3, which originally allowed only for extremely limited participation by NGOs, and did not encourage their participation in annual meetings of the International Whaling Commission or in meetings of technical and scientific committees. *See* M'Gonigle, *supra* note 30, at 195. Compared to the whaling convention, CITES "actively fosters cooperation" for purposes of tracking wildlife trade. *Id.* at 198.

41. However, there have been recent efforts on that part of some Parties to circumscribe the role played by NGOs at the Conferences of the Parties. *See Statement of Canadian Delegation*, in PROCEEDINGS OF THE FIFTH MEETING, *supra* note 14.

42. NGOs, both conservation- and trade-oriented, have contributed, inter alia, to the development of publicity material on CITES; printing export permits for Bolivia and Paraguay on special security paper; population studies on South American spotted cats and otters; and regional training seminars for officials from the Management Authorities of less developed countries. *See, e.g.*, *Report from the Secretariat: External Funding*, Doc. 4.11, in PROCEEDINGS OF THE FOURTH MEETING, *supra* note 30, at 343. NGOs also paid the

mation sources for the Secretariat with regard to national policies and infractions of CITES, conservation groups have paid for certain Secretariat activities and studies, have contributed to implementation seminars for enforcement officials, and have paid the expenses of delegates participating at COPs.[43] Most fundamentally, though, NGO oversight of Parties' implementing actions under CITES has been a key variable in achieving whatever success CITES has achieved. In the absence of NGO participation, CITES would very likely have followed the route of many other international wildlife measures into obscurity.

The Wisdom of Trade Controls as an International Response

To understand the potential impacts of the infrastructure established by CITES on species extinctions, it is important to remember the context of the extinction problem. At its best, CITES only regulates international trade. Domestic trade, even if its effects are felt internationally, is not addressed. Moreover, domestic activities that indirectly jeopardize endangered species, through habitat destruction, exotic species introduction, pesticide application, waste disposal, or otherwise, are also not covered by CITES.

Thus, the approach taken by trade controls as means of species conservation can be conceptually questioned on at least two levels. First, is focusing on the international wildlife trade an appropriate way to address species extinctions? Second, can the administrative infrastructure embodied in CITES achieve its goal of negating even just the impacts of international trade on a species' biological status?

Unfortunately, habitat loss is the primary threat facing species today, including many of the species for whom international trade is also seen as a significant threat.[44] Much of this habitat loss is occurring, at devastating rates, in tropical forest regions. This habitat loss creates still other problems in a ripple effect, as cleared areas make the remaining forests and other sensitive areas much more accessible to resource exploiters. The net result is that many species are being lost or threatened, some before they are even discovered.

CITES, however, deals exclusively with wildlife and products that cross national borders. Not even a hortatory reference is made to the need to protect the species' habitats. This emphasis can be attributed to several factors. First, international agreements have historically focused on species that cross national boundaries, or species that are permanently outside of a particular nation's control.[45] CITES' drafters no doubt saw the link between wildlife exploitation and the crossing of national boundaries in the form of wildlife trade as something susceptible to a tradition of international cooperation.

Second, regulation of the international wildlife trade impinges far less on the economic and political interests of sovereign nations than would international programs to regulate national land use practices, and hence generally receive more support (or less opposition) from national governments. Import and export permit requirements do not directly interfere with a nation's internal affairs, nominally affect all signatories equally, and tend to affect relatively small political interest groups, such as wildlife traders.[46] Habitat conservation, on the other hand, requires the setting aside of land inside the boundaries of a state that could be used for other purposes, involves the displacement or exclusion of politically volatile interest groups, such as landless peasants, and requires disproportionately costly action on the part of biologically rich nations than biologically poor nations.[47] Adherence to a habitat conservation treaty would also implicitly involve the cession of a significant amount of national sovereignty to foreign nations.[48]

These factors no doubt contributed to CITES' exclusive focus on international trade. Bolstering this approach was a string of wildlife and nature conservation failures in the form of earlier and generally broader treaties,[49] and the perceived need to obtain as many nations as Parties to the Convention as possible.[50] The net result, however, is an approach to the species extinction problem that in the vast majority of cases can only partially alleviate the threat facing a species, rather than solving the problem and restoring the species.

How much of even just a moderating influence CITES can achieve is the second of the conceptual questions one can ask of CITES.[51] Several variables common in efforts

expenses of more than 30 delegates to the Fifth Conference of the Parties. *Summary Report of the Plenary Session*, Plen. 5.3, in PROCEEDINGS OF THE FIFTH MEETING, *supra* note 14, at 97. The NGOs contribute much more than funding studies and sending participants to the Conferences of the Parties. Many NGOs actively investigate alleged incidents of illegal wildlife trading on their own. *See, e.g.*, World Wildlife Fund, Raid Nets Parrot Smugglers in Paraguay (Mar. 26, 1987) (press release announcing recovery of two poached Appendix I Spix's macaws).

43. Although the Secretariat and the Parties constantly request the NGOs to contribute funds, in some cases NGO sponsorship has been controversial. Following the Fifth Conference of the Parties in 1985, the U.S. Government Accounting Office (GAO) was asked to investigate charges that NGO payments for travel and expenses of delegates were intended to influence their voting at the Conference. The GAO report found no evidence of such impacts. U.S. GENERAL ACCOUNTING OFFICE, INTERNATIONAL ORGANIZATIONS: PRIVATE FUNDING OF DELEGATE TRAVEL (Oct. 1986).

44. *See generally* N. MYERS and P. EHRLICH & A. EHRLICH, *supra* note 6.

45. *See, e.g.*, Polar Bear Convention, *supra* note 1; Convention on the Conservation of Antarctic Marine Living Resources, May, 1980, T.I.A.S. No. 10240, 19 I.L.M. 841; International Convention for the Regulation of Whaling, *supra* note 3. *See also* treaties listed *supra* note 2.

46. Ongoing trade regulation is also something that politicians can point to at home and abroad as evidence of something being done to address the problem of species extinctions. The establishment of a bureaucracy, the annual expenditure of funds from a state treasury, and the existence of a paper trail that can be followed are all clear indicators that some activity is taking place, as compared to the static existence of a nature preserve.

47. This can be problematic, since the biologically rich nations are the economically poorer nations.

48. Other treaties have called upon nations to take action concerning habitat conservation, with virtually no result. *See, e.g.*, Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, Oct. 12, 1940, 56 Stat. 1354, T.S. No. 982; African Convention on the Conservation of Nature and Natural Resources, Sept. 15, 1968, 1001 U.N.T.S. 3. For a discussion of the problems encountered in implementing these and other conventions, see R. Orenstein, The Role of International Law in the Conservation of Wildlife (1983) (unpublished manuscript, available from authors).

49. *See, e.g.*, Western Hemisphere Convention, African Convention, *supra* note 48.

50. The push to obtain as universal an application for CITES as possible has been consistently pushed by the Secretariat and the Parties. No attention has been paid to the countervailing difficulties of managing CITES as the number of Parties has grown, and to the problems caused by weak links in worldwide implementation.

51. In rare cases, trade is the key threat facing a species, as it is for

to predict the success of regulatory instruments can be applied to a simple conceptual review of CITES. These variables include those of issue area complexity; the number of actors whose behavior must be changed for success to ensue; the degree of behavioral change required; the complexity of the measures required to bring about, monitor, and effect such behavioral changes; and the efficacy of sanctions against actors resistant to the change.[52]

When evaluated in light of these variables, the wildlife trade appears very difficult to regulate for conservation purposes. It is an extremely complex issue area, involving literally thousands of species and dozens of major importing and exporting nations. Trade chains vary from a subsistence peasant collecting a few birds to sophisticated hunting, trapping, and poaching operations. Species have different common names in each language, and for some species disagreement exists even among taxonomists. In some cases it is virtually impossible to identify the species from which a product was made. National legislation governing species exploitation varies widely.

To effectively control this trade, one would have to change the behavior of the hundreds of thousands of individuals involved in the harvesting, trading, processing, and marketing of relevant species. For many, the change would threaten their economic livelihood and is likely to be resisted. To actually monitor the trade controls would require tracking what leaves a particular country, what intermediate steps are made for processing, what products are manufactured from raw skins and other precursors to finished products, and where all these products ultimately go. Given the hundreds of thousands of shipments involved in the trade, and the many avenues by which they can move between a particular point of origin and their final point of consumption, this tracking presents an arguably insurmountable challenge.[53]

Overall, the problems facing trade controls as a conservation measure are mammoth. As in the drug trade, the illegal wildlife trade can be so lucrative that people will always be willing to take the risk for some products literally worth their weight in gold, as is rhino horn. Also as with the drug trade, the primary countries of origin may be in no position to adequately track or control the trade and may be faced with many problems they perceive as more pressing than wildlife species.

several rhinoceros species. In such cases, the impact of trade controls could be more than moderating. The economic value of rhino horn, however, makes it almost impossible for trade controls to stop the trade.

52. Utilizing these variables and others, the field of implementation and public policy analysis has delved into the successes and failures of public policy initiatives. *See, e.g.*, E. BARDACH, THE IMPLEMENTATION GAME (1977); P. SABATIER & D. MAZMANIAN, IMPLEMENTATION (1983); SOCIAL REGULATION: STRATEGIES FOR REFORM (E. Bardach and R. Kagan eds. 1982). Most of the analysis to date, however, has focused on the implementation of domestic programs in the United States and, to some extent, Western Europe.

53. CITES Parties are required to submit annual reports on their trade in CITES species. CITES, *supra* note 7, art. VIII, para. 7(a), ELR STAT. 40338. Although these reports have become more and more voluminous, attempts to analyze the trade using these statistics have proven difficult. Generally, it is found that the quality of the reporting is so poor that firm conclusions cannot be made regarding the trade in a particular species or group of species. Statistical analysis of the annual reports by the World Trade Monitoring Unit (WTMU) in Cambridge, England, has revealed that at least 60 to 69 percent of transactions involving animals and 73 to 84 percent of transactions involving plants went completely unreported during the period 1981-1983. *Report on National Reports Under Article VIII, Paragraph 7 of the Convention*, Doc. 5.17, in PROCEEDINGS OF THE FIFTH MEETING, *supra* note 14, at 375. The percentages were 45 percent and 79 percent respectively for the period 1979-1980. *Report on National Reports Under Article VIII, Paragraph 7 of the Convention*, Doc. 4.18, in PROCEEDINGS OF THE FOURTH MEETING, *supra* note 30, at 434. There are virtually no perfect correlations between specimens reported exported from one country and reported imported by another.

CITES in Practice

Nevertheless, CITES was the instrument chosen for the goal of neutralizing the detrimental impacts of international trade on species survival. At a time when these threats were still small by comparison, the IUCN recommended development of an international treaty to regulate the trade in endangered species.[54] Ten years and seven drafts later, representatives of some 80 nations gathered in Washington, D.C., in 1973 to finalize and sign CITES. Although by far not the first international attempt to protect wildlife endangered by human activity, and not even the first to encompass controls on international trade in protected species,[55] CITES has become unique among the list in several respects.

Today, 12 years after it came into force,[56] the momentum behind CITES remains strong. It now has 95 Parties,[57] more than any other conservation convention, and consists of most of the world's significant wildlife-importing and wildlife-exporting nations. The effort dedicated to its administration and enforcement throughout the world goes far beyond that which has been dedicated to other international conservation instruments.[58] It is one of the few conservation treaties that provides for a sophisticated, permanent, administrative infrastructure;[59] these provisions have since been copied in other environmental treaties and are now generally accepted as prerequisites for a successful conservation instrument.[60] The amount of money allotted to its implementation on a worldwide level far exceeds that

54. IUCN's 1963 General Assembly in Nairobi, Kenya, adopted this recommendation, and a resolution was passed calling on IUCN to draft an international treaty on trade in endangered species. *See* R. BOARDMAN, INTERNATIONAL ORGANIZATION AND THE CONSERVATION OF NATURE 88 (1981).

55. *See, e.g.*, Western Hemisphere Convention, art. IX; African Convention, art. IX, *supra* note 48.

56. CITES came into force on July 1, 1975, with its ratification by 10 countries.

57. Although a total of 95 Parties has been reached, the United Arab Emirates (UAE), one of the original 10 ratifying nations, recently notified the CITES Secretariat of its intent to withdraw from the treaty. The UAE had been criticized for failing to implement CITES' provisions. It is the only country so far that has withdrawn from the treaty.

58. One could argue that the attention devoted to the International Convention for the Regulation of Whaling (ICRW), *supra* note 3, is an exception to this statement. The ICRW, however, was an agreement designed more to be able to continue whale exploitation rather than to conserve whale populations. And even the ICRW received little attention from many countries and organizations for the first 30 years of its existence. *See generally* M'Gonigle, *supra* note 30.

59. The Convention provides for a permanent Secretariat, currently located in Lausanne, Switzerland. CITES, *supra* note 7, art. XII, ELR STAT. 40338. Every two years, the Parties hold a meeting at which they are required by the terms of CITES to evaluate and assess the current status of international trade in the species they have listed as being subject to regulation, to add species to or delete species from these lists, and to discuss means of improving implementation of the measures called for by the treaty. *Id.* art. XI, ELR STAT. 40338. The actual focus of the meetings has tended to be in the area of amending the Appendices of regulated species, and to further interpret the text of the Convention. There has been little discussion of the actual status of CITES implementation in Party states.

60. *See supra* note 33.

of any other conservation convention.[61] Costs imposed on wildlife traders, such as the costs of procuring permits, preparing the paperwork involved for CITES shipments, and absorbing the delays caused by CITES procedures, probably multiply governmentally incurred costs and certainly constitute a significant portion of the budget of many of the environmental NGOs concerned with wildlife conservation.[62] Perhaps most significantly, it is considered by many to be a success in a field characterized predominantly by failures. World Wildlife Fund, for example, has concluded that CITES "is perhaps the most effective conservation treaty in existence."[63]

At the same time, proponents of CITES are unable to name even a single species that has clearly been helped by trade controls imposed under the treaty. Illegal trade is rampant. Implementation is becoming ever more complex in the form of additional species being covered and additional interpretations of exemptions provisions becoming more complex. Enforcement both here and abroad appears woefully inadequate. The numbers of threatened and endangered species continue to grow, and high-ranking officials have considered whether the United States should withdraw from CITES altogether.[64]

Defining Success in CITES Implementation

These apparently contradictory measures of CITES' influence raise questions about how success in its implementation should be defined. Defining CITES' success, however, is not simple. Although the treaty sets out many specific measures to be taken by member states, compliance with these measures may or may not achieve the underlying goal of CITES: neutralizing the detrimental impacts of the wildlife trade on the biological status of endangered or vulnerable species.[65] Effective sanctions for trade control violations, for example, may or may not actually contribute to the conservation of species in the wild, for many intervening variables are involved. Many of the individuals involved in harvesting wildlife have probably never even heard of CITES. It is probably safe to conclude, however, that in the absence of effective sanctions, the potential for achievement of the treaty's conservation goals diminishes drastically.[66] It is therefore legitimate to focus in this first look at CITES on this key building block of CITES' success.

Enforcing CITES

After 12 years in force, the administrative structure of CITES is relatively well established. Many observers conclude the Convention has matured and that the parties have worked through many of the initial difficulties that plague any new and complex program.[67] Most of the major importing countries have now been Parties to CITES for some time, and their Management Authorities[68] have had time to integrate CITES and its accompanying regulation framework into their own domestic framework.[69]

Administrative provisions are, however, only superficial indicators of success. Whether the establishment of Management and Scientific Authorities and the existence of a permanent Secretariat actually contribute to the accomplishment of the drafters' goals, whether the establishment of Management Authorities has contributed to the creation of a wildlife conservation ethic in developing countries, whether the Secretariat fulfills the goals it was designed to accomplish, and finally, whether the status of any species CITES proclaims to protect has ceased to decline or actually improved because of CITES—none of these questions has been adequately answered by research into CITES' implementation. An understanding of the legal functioning of CITES in the major wildlife trading nations

61. The Secretariat's estimated budget for the period 1986-87 was about $1.5 million. *Budget for 1986-87*, Doc. 5.10, in PROCEEDINGS OF THE FIFTH MEETING, *supra* note 14, at 298. Under CITES' terms, each Party is also required to establish administrative organs, both management and scientific, for administering the issuance of CITES permits. In addition, Parties are to monitor exports and imports of wildlife products to assure the presence of valid permits for CITES species. *See supra* note 19 and accompanying text. In cases where these duties were subsumed by existing organizations, the incremental cost of CITES may not have been dramatic. In other cases where new organizations were established for these purposes, the costs would have been significant.

62. The TRAFFIC network, for example, was established specifically for the purpose of tracking trade in wildlife and wildlife products. Run in association with the World Wildlife Fund, TRAFFIC has offices in 10 countries on 5 continents.

63. World Wildlife Fund, Factsheet: CITES (Dec. 1986). International efforts to deal with the conservation of wildlife resources have generally been more noteworthy for their lack of cohesiveness than for their success and effectiveness. The problems faced by the International Whaling Commission since its inception in 1946, for example, serve as a prime example of what happens when nations come together to discuss renewable resources; they focus almost exclusively on their own self-interest. *See generally* M'Gonigle, *supra* note 30; R. Orenstein, *supra* note 48.

Other less well-known legal instruments that have been adopted to deal with wildlife resource issues have suffered from a lack of political commitment by member nations, from inadequacy in basic provisions, and from complete lack of funding. The Western Hemisphere Convention, *supra* note 48, for example, was signed by the United States in 1940 and ratified in 1941; yet Congress did not enact any implementing legislation for the convention until it enacted the 1973 Endangered Species Act. *See* §8A(e) of the Act, 16 U.S.C. §1537a, ELR STAT. 41832:1. Even then, no funds were appropriated for implementation until the enactment of the 1982 amendments to the ESA, at which time Congress allotted $150,000 to the Fish and Wildlife Service for implementation of the Convention for each of the fiscal years 1983-1985. UNITED STATES FISH AND WILDLIFE SERVICE, FAUNAL AND FLORAL CONSERVATION IN LATIN AMERICA AND THE CARIBBEAN: A REPORT TO CONGRESS ON IMPLEMENTATION OF THE WESTERN HEMISPHERE CONVENTION 2 (1985).

64. Confidential interview with Fish and Wildlife official in Washington, D.C. (Apr. 1987).

65. And if trade impacts are neutralized through CITES while the species becomes extinct through loss of habitat, the success of CITES would ring hollow.

66. In any attempt to force socially responsible behavior, as opposed to promoting it through subsidies or other positive reinforcements, violations must be penalized in some way if individuals are to be expected to change their behavior. Yet even in cases where strict sanctions often are imposed, e.g., illegal drugs entering the United States the trade continues. Moreover, the link between these sanctions and abandonment of the growing of coca in Bolivian forests is tenuous at best. The same can be said for the link between U.S. sanctions in CITES and the actual taking of wildlife. In the absence of sanctions, however, failure of a restrictive policy is virtually guaranteed.

67. Other observers have concluded that the apex of bureaucratic interest and involvement in CITES has already passed, and that implementation will become more and more bureaucratic (and less effective) as time goes on. Interview with G. Lucas, Royal Botanic Gardens, in Gland, Switzerland (June 7, 1984).

68. *See supra* text accompanying notes 34-35.

69. A problem that negatively affects the establishment of this infrastructure is the tendency of most government bureaucracies to rotate civil servants from position to position. For some Management Authorities, this results in a different delegation at every biennial Conference of the Parties. Turnover is likely to be even higher in field enforcement positions, e.g., wildlife and customs inspectors. It is therefore extremely difficult to maintain even the minimum of expertise needed to effectively carry out CITES-mandated obligations.

is a necessary first step in knowing whether the treaty has succeeded.

The United States' Role

The United States has one of the more sophisticated CITES implementation programs. It was the first country to ratify CITES with the enactment of the Endangered Species Act of 1973. The Management and Scientific Authorities were designated in 1976,[70] and final regulations were promulgated in 1977.[71] Although the program thus did not begin until four years after ratification, the United States can legitimately claim to have implemented CITES among the longest of any of the 95 Parties.[72] Consequently, analysis of CITES enforcement in this country is likely to be a good indicator of the effectiveness of administratively sophisticated CITES enforcement in general.

U.S. Enforcement of CITES: A Case Study

As indicated above, the declared value of the international trade into and out of the United States is over $1 billion dollars.[73] Nonetheless, this fails to illustrate the true magnitude of the enforcement problem. Some 50,000 shipments enter the country annually,[74] some huge, some consisting only of an individual live specimen or product. With only 55 wildlife inspectors spread among the nine ports of entry designated for wildlife, only a fraction of the shipments can be inspected. Very few inspections are done on the vast number of undeclared shipments that *could* harbor illegal wildlife. Moreover, this does not even begin to address the potential for illegal imports, innocent or otherwise, brought in by tourists under CITES' personal effects exemption, much less outright smuggling. In fact, inspections tend to focus on those shipments specifically declared as wildlife products, whereas one could argue that sophisticated smugglers would carry out their activities more surreptitiously.

Although any specific number is speculation, at best, illegal trade into and out of this country certainly exceeds the $100 million worth of seizures made by the Fish and Wildlife Service every year. Measuring illegal export is even more difficult, for there is virtually no way to check what goes out of the country. There is no way to estimate whether the shipments being seized represent the bulk of the illegal trade or whether they are only a small fraction of it. But some idea can be formulated. In 1983, for example, FWS inspected 50 containerized imported shipments, at random, for the first time. Illegal wildlife was discovered in 30 of them; one shipment alone was worth $700,000.[75] Some 800,000 containers come into the United States every year, generally uninspected.[76]

70. The Management and Scientific Authorities were designated by presidential order in April 1976. Exec. Order No. 11911, 41 Fed. Reg. 15683, ELR REG./ADMIN. MATERIALS 45021 (1976).

71. 50 C.F.R. part 23 (1986).

72. Four Parties promulgated domestic regulations prior to the United States: Canada, Switzerland, the United Kingdom, and West Germany. *Endangered Species Permits Required May 23: Enforcement Starts*, 2 ENDANGERED SPECIES TECHNICAL BULL. 2 (Mar. 1977).

73. *See supra* note 9 and accompanying text.

74. Interview with J. Smith, Fish and Wildlife Service, Division of Law Enforcement, in Washington, D.C. (Nov. 1984); *Wildlife Imports Increase While Law Enforcement Budget Stagnates*, 2 TRAFFIC-U.S.A., No. 2, 1981, at 4 ("well over" 40,000).

75. J. Smith, *supra* note 74.

76. *Id.* Opening up containerized shipments is a labor-intensive, time-consuming, costly task. A single container can be the size of a large truck; tons of material are enclosed. Consignees and owners of property are not hesitant about complaining to high level agency officials or calling their congressional representative to complain about a shipment being held for investigation. Confidential interview with FWS wildlife inspector (Mar. 1987). Moreover, persons intent on avoiding the system can usually do so by using the mail, since only a small percentage of undeclared shipments are checked and many mail facilities do not have sufficiently advanced equipment to detect hidden wildlife and wildlife products. Confidential interviews with FWS wildlife inspectors (Feb. 1985). *See* F. Campbell and L. McMahan, Article on Cactus Trade, in CALIFORNIA CACTUS GROWERS ASSOCIATION NEWSLETTER, May 1983, at 3 (discussing problems of CITES enforcement for plants).

Legislative Basis for U.S. Implementation: The Big Stick?

This extremely complex and overwhelming enforcement environment is responded to in the United States by a series of laws that regulate the import and export of wildlife and other products.

Endangered Species Act

Implementation of CITES in the United States is officially accomplished by the Endangered Species Act (ESA),[77] which was enacted shortly after the plenipotentiary conference on CITES was held in Washington. The scope of CITES itself is limited by the Convention's terms to international trade,[78] as compared to the more broadly defined ESA,[79] and the legislation implementing CITES consists of only a small portion of the ESA.[80]

The ESA's listing of endangered and threatened species is distinct from the CITES appendix listings.[81] Although the lists overlap, they are not identical.[82] Moreover, the

77. 16 U.S.C. §§1531-1543, ELR STAT. 41825. In practice, wildlife law enforcement officials in this country often resort to other statutes even when CITES-listed species are involved. Some of the more commonly used enforcement statutes include the customs laws and the conspiracy and smuggling statutes. *See infra* text accompanying notes 134-139.

78. *See supra* text accompanying notes 45-50.

79. The Endangered Species Act has been referred to as "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation." Tennessee Valley Authority v. Hill, 437 U.S. 153, 180, 8 ELR 20513, 20519 (1978).

The stated purposes of the ESA are to preserve ecosystems, to conserve endangered and threatened species, and to achieve the purposes of several treaties, CITES included. ESA §2(b), 16 U.S.C. §1531(b), ELR STAT. 41825.

80. ESA §8A, 16 U.S.C. §1537A, ELR STAT. 41832:1. CITES is also addressed in two other subsections. In ESA §2(a)(4)(F), Congress finds that the United States has pledged to conserve endangered wildlife pursuant to CITES. 16 U.S.C. §1531(a)(4)(F), ELR STAT. 41825. Section 9(c)(1) makes it unlawful to engage in trade or possess any specimens traded contrary to CITES' provisions. 16 U.S.C. §1538(c)(1), ELR STAT. 41832:2. It has been stated that the treaty provided significant "conceptual underpinnings" for the ESA. M. Bean, *supra* note 20, at 325. A related international provision provides that the United States will enter into conservation agreements with foreign nations, provide assistance in personnel and funding to other nations and international organizations, and conduct enforcement investigations and research. ESA §8, 16 U.S.C. §1537, ELR STAT. 41832.

81. *Compare* species listed at 50 C.F.R. Parts 17 (ESA listings) and 18 (marine mammals listings) with those listed at 50 C.F.R. §23.23 (CITES listings).

82. The purposes of CITES and of the ESA are very different. *Compare* ESA §2(b) ("The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved . . .") with CITES Preamble ("international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade"). *See also supra* notes 78-79 and accompanying text. Also, listing a species on the ESA list may bring into play

criteria for listing species under the ESA are different from those adopted by the Parties for listing on the CITES appendices.[83]

□ *Convention Responsibilities*: The ESA designates the Secretary of the Interior as both the Management Authority and Scientific Authority.[84] These functions are performed by the Wildlife Permit Office of the United States Fish and Wildlife Service (FWS).[85] The Animal and Plant Health Inspection Service (APHIS) in the Department of Agriculture is responsible for overseeing import and export activities with respect to plants.[86]

□ *Import/Export Prohibitions*: The Act prohibits import, export, sale, or shipment in the course of a commercial activity, and possession of any species taken in violation of the Act.[87] It explicitly prohibits the trade of any wildlife in contravention of CITES or the possession of CITES specimens unlawfully traded.[88] The Act requires wildlife and plant importers and exporters to obtain licenses to conduct their operations.[89]

□ *Penalties*: The ESA provides civil and criminal penalties. For most violators, knowing unlawful conduct is required. Strict liability is imposed on importers and exporters.[90] No penalty will be imposed if the defendant shows by a preponderance of the evidence that he or she acted in a good faith belief that the action was necessary to protect a person from harm from the species.[91]

The ESA's criminal violations are misdemeanors, and the maximum criminal penalty that can be imposed under the Act itself: $20,000 or up to one year in prison, or both.[92] However, in 1984 Congress increased the possible fines for all crimes, both misdemeanors and felonies, in the Omnibus Crime Control Act.[93] This Act, applying to offenses described in almost all federal statutes, raises the possible maximum fine for all persons to $100,000 until November 1987 for misdemeanors punishable by imprisonment for more than six months.[94] After that date, an organization could still be fined $100,000 but an individual committing such a misdemeanor will face a potential maximum fine of $25,000.[95] If a violator derives pecuniary gain from the offense, or causes pecuniary loss to another, the fine may be up to twice the gross gain or loss.[96]

The Secretary of the Interior may directly impose civil penalties of up to $10,000 for each violation for persons who knowingly violate certain provisions and for importers and exporters who violate them whether knowingly or not.[97] The maximum civil penalty that can be imposed against other violators on a strict liability basis is $500.[98] The same good faith defense is available as for criminal prosecutions.[99] Notice and opportunity for a hearing must be provided.[100] A violator subject to a civil penalty may be given the opportunity to settle the civil penalty claim by transferring to the United States all interests held in the illegal wildlife.[101]

The Secretary has the discretion to impose additional administrative sanctions, such as the revocation of a federal import, export, or quarantine station license.[102] The ESA also allows the government to confiscate the animal or

additional protections, such as the designation of critical habitat for species indigenous to the United States. The U.S. government may agree to abide by the Parties' decision to list a species or genera on the CITES' Appendices, while concluding that the listing does not conform to ESA criteria.

83. The Fish and Wildlife Service stated from the very beginning that it did not intend to propose every species listed by the CITES Parties for listing under the ESA. *Endangered Species Treaty Permits Required May 23: Enforcement Starts*, 2 ENDANGERED SPECIES TECHNICAL BULL. 2 (Mar. 1977). The premise works both ways, since the ESA is in certain respects more stringent than CITES. This is permissible under the treaty's provisions allowing for more stringent domestic measures. CITES, *supra* note 7, art. XIV, para. 1, ELR STAT. 40338.

84. ESA §8A(a), 16 U.S.C. §1537a(a), ELR STAT. 41832. Originally, the Scientific Authority was a separate semiautonomous committee established by presidential order. The Endangered Species Scientific Authority had representatives from six federal agencies, including the Department of the Interior, and the Smithsonian Institution. 2 ENDANGERED SPECIES TECHNICAL BULL. 3 (Oct. 1977). The functions of the Management and Scientific Authority were consolidated in the Fish and Wildlife Service with the 1979 amendments to the ESA.

85. Under the ESA's domestic provisions, the National Oceanic and Atmospheric Administration (NOAA) is responsible for endangered and threatened marine species. 50 C.F.R. parts 216-228 (1986). This may overlap with the United States' CITES responsibilities, under which the FWS is the responsible agency. *See, e.g.*, Newell v. Baldridge, 548 F. Supp. 39, 13 ELR 20476 (digest) (W.D. Wash. 1982) (NOAA investigation resulting in ESA, Lacey Act civil penalties for import of endangered sea turtles).

86. The FWS, however, often still handles interstate undercover investigations relating to illegal plant activity. Interview with D. McMullen, Assistant Regional Director for Law Enforcement, in Portland, Oregon (Mar. 30, 1987). There is currently a proposal to transfer APHIS' responsibilities to the Fish and Wildlife Service. *Endangered Species Office Revamped*, LAND LETTER, May 1, 1987, at 4.

87. ESA §9(a)(1), 16 U.S.C. §1538(a)(1), ELR STAT. 41832:1. Import is defined as

> to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

ESA §3(10), 16 U.S.C. §1532(10), ELR STAT. 41826. *See* United States v. 3,210 Crusted Sides of Caiman Crocodilus Yacare, 636 F. Supp. 1281, 16 ELR 20889 (S.D. Fla. 1986) (unscheduled landing at United States airport within meaning of "import" under ESA and Lacey Act).

88. ESA §9(c), 16 U.S.C. §1538(c), ELR STAT. 41832:2.

89. ESA §9(d), 16 U.S.C. §1538(d), ELR STAT. 41832:2.

90. ESA §11(b)(1), 16 U.S.C. §1540(b)(1), ELR STAT. 41832:5.

91. ESA §11(b)(3), 16 U.S.C. §1540(b)(3), ELR STAT. 41832:5.

92. ESA §11(b)(1), 16 U.S.C. §1540(b)(1), ELR STAT. 41832:5. Maximum penalties under the ESA are higher for violations involving endangered, rather than threatened, species. *Id. Compare* §§9(a)(1)(A)-(F) (listing unlawful activities involving endangered species) with §9(a)(1)(G) (making it unlawful to violate regulations promulgated by the Secretary pertaining to threatened species). ESA §§9(a)(1)(A)-(G), 16 U.S.C. §§1538(a)(1)(A)-(G), ELR STAT. 41832:1.

93. Pub. L. No. 98-473, 98 Stat. 1987, *as amended by* Pub. L. No. 99-217, 99 Stat. 1728 (codified throughout 18 U.S.C.).

94. 18 U.S.C. §3623(a)(5), (b)(5) (section to be repealed effective Nov. 1, 1987).

95. 18 U.S.C. §3571(b)(1)(B), (b)(2)(B) (effective Nov. 1, 1987).

96. 18 U.S.C. §3623(c)(1) (section to be repealed effective Nov. 1, 1987).

97. ESA §11(a)(1), 16 U.S.C. §1540(a)(1), ELR STAT. 41832:5. As with criminal penalties, these maximum civil penalties can only be applied to violations involving endangered species. *See supra* note 92.

98. ESA §11(a)(1), 16 U.S.C. §1540(a)(1), ELR STAT. 41832:5.

99. ESA §11(a)(3), 16 U.S.C. §1540(a)(3), ELR STAT. 41832:5. *See supra* text at note 91.

100. ESA §11(a)(1), 16 U.S.C. §1540(a)(1), ELR STAT. 41832:5. Hearings are conducted in accordance with the Administrative Procedure Act; the standard of review in federal district court is substantial evidence. Newell v. Baldridge, 548 F. Supp. 39, 13 ELR 20476 (digest) (W.D. Wash. 1982).

101. 50 C.F.R. §12.25 (1986).

102. ESA §11(b)(2), 16 U.S.C. §1540(b)(2), ELR STAT. 41832:5.

plant specimens for any violation and to confiscate personal property involved where a criminal conviction has been obtained.[103] The Department of the Interior or Agriculture may institute administrative forfeiture proceedings whenever the wildlife is determined to have a value no greater than $100,000.[104] A claimant to the property must file a bond of $5,000 or 10 percent of the property's value, whichever is less.[105] In proceedings involving animals, a motion for a stay of an administrative forfeiture will only be granted—and even then subject to the Department of the Interior's discretion—where the claimant can show fee simple title to the property and offers to pay in advance all reasonable storage costs, and a stay would not injure the rights of third parties.[106]

Lacey Act

One other federal statute, the Lacey Act,[107] plays an important role in the implementation of CITES, since it allows for civil and criminal sanctions for violations of foreign law. It is the Lacey Act that enables, or could enable, U.S. authorities to essentially apply the laws of other countries in wildlife trade enforcement in the United States.[108]

The Lacey Act was originally enacted in 1900 to aid states in controlling interstate commerce in certain wildlife species.[109] The Act in its current form[110] makes it a violation of federal law for any person to import[111] or export animals taken, possessed, transported, or sold in violation of the laws of a state, Indian tribe, foreign country, or in violation of a treaty.[112] The same provisions apply to plants, with the exception of the foreign law provisions.[113]

☐ *Penalties*: The Lacey Act provides for criminal and civil sanctions and strict liability forfeiture of the specimens involved. The Act itself makes it a felony, subject to a maximum criminal penalty of $20,000 or imprisonment of up to five years, or both, if an importer or exporter knowingly takes or possesses a specimen in violation of an underlying foreign law or treaty.[114] This potential maximum has effectively been raised by the Omnibus Crime Control Act to $250,000 for individuals and $500,000 for persons other than individuals.[115] For persons other than importers, these serious penalties can only be applied if the market value of the wildlife is more than $350.[116] It is not necessary that the person knew of the existence of the Lacey Act itself.[117]

A violation is a misdemeanor, subject to a fine of $100,000 and up to one year in prison, where a person knowingly engaged in conduct that is prohibited and should have known that the particular wildlife in question was taken illegally.[118] Although Congress did not want to go so far as to require specific intent to violate the law, it was concerned that the absence of a culpability standard would encourage enforcement abuses.[119]

A due care standard applies to the Secretary of the Interior's authority to assess up to $10,000 in civil penalties for violations of the Act.[120] When the market value of the

103. ESA §§11(e)(4)(A) and (B), 16 U.S.C. §§1540(e)(4)(A) and (B), ELR STAT. 41832:5.

104. 50 C.F.R. §12.23 (1986) (animals); 7 C.F.R. §356.4 (1986) (plants).

105. *Id.*

106. 50 C.F.R. §12.23 (1986).

107. 16 U.S.C. §§3371-3378.

108. The Lacey Act has been referred to as the "cornerstone of federal efforts to conserve wildlife through the regulation of commerce." M. BEAN, *supra* note 20, at 105. Congress did not originally intend, however, for the Lacey Act to be the start of a major federal program. *Id.*; S. REP. No. 123, 97th Cong., 1st Sess. 2, *reprinted in* 1981 U.S. CODE CONG. & ADMIN. NEWS 1748, 1749.

109. S. REP. No. 123, *supra* note 108, at 2, in 1981 U.S. CODE CONG. & ADMIN. NEWS at 1749; M. BEAN, *supra* note 20, at 105. Subsequent case law indicates that the Lacey Act expanded the states' power to regulate transportation of wildlife rather than constricting it. *See* Palmer, *Endangered Species Protection: A History of Congressional Action*, 4 ENVTL. AFF. 255, 258 (1975).

110. The Lacey Act has undergone several metamorphoses over the years. Originally, the Act prohibited any person to deliver to a common carrier, or for any common carrier to transport from one state or territory to another, wild animals or birds killed in violation of state or territorial law. In 1926 Congress passed separate legislation to protect two species of black bass. Black Bass Act, 16 U.S.C. §§851-856 (repealed). Both statutes were amended several times. In 1981, amendments to the Lacey Act repealed all of the Black Bass Act and a substantial portion of the existing Lacey Act and consolidated the provisions of both statutes into one new, significantly revised, Lacey Act. 16 U.S.C. §§3371-3378. For a more detailed discussion of the various amendments to the Lacey Act over the years, see M. BEAN, *supra* note 20, at 106-111; and Palmer, *supra* note 109, at 256.

111. "Import" is specifically defined to have the same meaning under the Lacey Act as it does under the ESA. S. REP. No. 123, *supra* note 108, at 5, in 1981 U.S. CODE CONG. & ADMIN. NEWS at 1752. Both statutes incorporate a meaning of the word that is broader than the definition given under the customs laws. Lacey Act §3(a), 16 U.S.C. §3372(a).

112. Lacey Act §3(a), 16 U.S.C. §3372(a). The illegal taking or possession of specimens in violation of a treaty or Indian tribal law is sufficient.

Attempts have been made to challenge the Lacey Act's foreign law provision on the grounds that it is unconstitutionally vague. *See* Anna Marie's, Inc. v. United States Fish and Wildlife Service, No. 84-6540 CIV-ALH (S.D. Fla. June 1984). Constitutional challenges to state law provisions, upon which Lacey Act convictions may be based, have failed. *See* United States v. Taylor, 477 U.S. ____, 106 S. Ct. 2440 (1986) (state ban on importation into state of live baitfish upon which Lacey Act conviction based does not violate Commerce Clause); United States v. Doyle, 786 F.2d 1440, 16 ELR 20519 (9th Cir. 1986) (underlying Montana law upon which Lacey Act felony conviction based not unconstitutionally vague). *But cf.* United States v. Wulff, 758 F.2d 1121, 15 ELR 20356 (6th Cir. 1985) (felony provision of Migratory Bird Treaty Act lacking scienter element violates due process).

113. Lacey Act §3(a)(1), §3372(a)(1). The 1981 amendments expanded the scope of the Lacey Act so that it now applies to all wild animals and to many plants. Plants that are covered are those that are indigenous to a state and those that are listed on either the CITES appendices or any state list of threatened or endangered species. Lacey Act §2(f), 16 U.S.C. §3371(f). Prior to plants' inclusion for protection, there was considerable concern over the impact of interstate commerce in certain species, particularly cacti. *See, e.g.*, Campbell, *Conserving Our Wild Plant Heritage*, ENVIRONMENT, Nov. 1980, at 14; Campbell, *The Lacey Act and the Cactus Collector*, 54 CACTUS & SUCCULENT J. 213 (1982).

114. Lacey Act §4(d)(1)(A), 16 U.S.C. §3373(d)(1)(A).

115. 18 U.S.C. §3623(a)(3), (b)(3) (section to be repealed effective Nov. 1, 1987); 18 U.S.C. §3571(b)(1)(A), (b)(2)(A) (effective Nov. 1, 1987). *See supra* notes 93-96.

116. Lacey Act §4(d)(1)(B), 16 U.S.C. §3373(d)(1)(B).

117. S. REP. No. 123, *supra* note 108, at 3, in 1981 U.S. CODE CONG. & ADMIN. NEWS at 1750.

118. Lacey Act §4(d)(2), 16 U.S.C. 3373(d)(2) (making particular conduct unlawful); 18 U.S.C. §§3623, 3571 (establishing penalty ceilings). The Lacey Act itself, prior to the Omnibus Crime Control Act, established a ceiling of $10,000 for misdemeanors.

119. S. REP. No. 123, *supra* note 108, at 3, in 1981 U.S. CODE CONG. & ADMIN. NEWS at 1750.

120. Lacey Act §4(a)(1), 16 U.S.C. §3373(a)(1).

wildlife is less than $350 and the violation consists only of the unlawful transportation, receipt, or acquisition of the wildlife, the civil penalty can be no more than the maximum provided for in the underlying law or $10,000, whichever is less.[121] Notice and opportunity for a hearing are required.[122] The Secretary is required to take into account the nature, circumstances, extent, and gravity of the violation in assessing the civil penalty, as well as the degree of culpability and the violator's ability to pay.[123]

The Act provides for strict liability forfeiture of the wildlife involved in the transaction.[124] As with the ESA, under the Lacey Act the Department of the Interior may institute administrative forfeiture proceedings whenever the wildlife is determined to have a value no greater than $100,000; other forfeiture procedures are also the same.[125] Forfeiture of equipment and vehicles is limited to situations in which the owner is convicted of a felony, and the owner of the item must have been a consenting party to the unlawful act or should have known, in the exercise of due care, that his or her equipment would be put to illegal use.[126] Moreover, as with the ESA, additional sanctions in the form of permit revocations are available to the government for persons convicted of criminal violations of the Act.[127]

It is commonly perceived that the 1981 amendments gave some teeth to the Lacey Act's prohibitions.[128] Clearly, Congress intended to make substantial changes in the existing provisions. The 1981 amendments increased the potential fines for a felony by twice the previous maximum fine and five times the previous possible prison term.[129] Moreover, until the Act was overhauled, criminal violations were misdemeanors only.[130] The 1981 Lacey Act amendments also doubled the maximum civil penalties that could be assessed.[131] The evidence indicated that previously U.S. Attorneys' offices were reluctant to spend significant amounts of time on Lacey Act violations as a result of the low level of penalties available, and that the judicial branch was reluctant to impose heavy penalties for misdemeanor violations.[132] The fine increase allowed by the Omnibus Crime Control Act strengthens this perception, even though it only applies to criminal penalties; its enactment indicates a congressional belief that criminal penalties in many federal statutes were insufficient to act as an effective deterrent to unlawful activity.

Nevertheless, there is as yet little empirical evidence in the effectiveness of the tougher Lacey Act sanctions. There have been few cases interpreting the Lacey Act's international provisions, and even fewer involving the 1981 amendments. Those that do exist do not provide sufficient information to make an informed judgment concerning the deterrent value of the seemingly stringent provisions.[133]

Other Statutes

The primary "non-environmental" statutes that are utilized in wildlife trade enforcement efforts include customs,[134] smuggling,[135] and conspiracy laws.[136] Mail fraud is occasionally used.[137] The government often has more success pursuing civil and criminal remedies under these statutes than under the statutes dedicated to wildlife law enforcement.[138] In addition, health laws such as quarantine laws can be used for certain species, mostly birds.[139]

U.S. Enforcement of CITES: A Stick or a Twig?

Through the ESA and related statutes such as the Lacey Act, the United States appears to have all the necessary

121. *Id.*

122. Lacey Act §4(a)(4), 16 U.S.C. §3373(a)(4). Hearings are conducted in accordance with the Administrative Procedure Act and de novo review is available in federal district court. §§4(b) and (c), 16 U.S.C. §§3373(b) and (c). *See* S. REP. No. 123, *supra* note 108, at 11, in 1981 U.S. CODE CONG. & ADMIN. NEWS at 1758.

123. Lacey Act §4(a)(6), 16 U.S.C. 3373(a)(6).

124. Lacey Act §5(a)(1), 16 U.S.C. §3374(a)(1).

125. 50 C.F.R. §12.23 (1986). *See supra* text accompanying notes 104-106.

126. Lacey Act §5(a)(2), 16 U.S.C. §3374(a)(2).

127. Lacey Act §4(e), 16 U.S.C. §3373(e).

128. *See* M. BEAN, *supra* note 20, at 113. The amendments clearly extended the Act's prohibitions concerning plants. *See supra* note 113.

129. S. REP. No. 123, *supra* note 108, at 2, in 1981 U.S. CODE CONG. & ADMIN. NEWS at 1749.

130. Congress noted that enacting a felony provision in the Lacey Act only helped make that law consistent with the existing customs laws, which applied to unlawful wildlife importations. Thus, the same transaction that would only be a misdemeanor under the pre-1981 Lacey Act would be a felony under 18 U.S.C. §545, which prohibits "knowing[] imports . . . contrary to law." S. REP. No. 123, *supra* note 108 at 11, 1981 U.S. CODE CONG. & ADMIN. NEWS at 1758.

131. Lacey Act §4(a), 16 U.S.C. 3373(a); *see also* S. REP. No. 123, *supra* note 108, at 3, 9, in 1981 U.S. CODE CONG. & ADMIN. NEWS at 1750, 1756.

132. *Id.* at 2, in 1981 U.S. CODE CONG. & ADMIN. NEWS at 1749.

133. In *Newell v. Baldridge*, the only reported case involving Lacey Act civil penalties, the court upheld a $1,000 civil penalty for each of 11 Lacey Act violations involving the import of endangered sea turtles. The court carefully supports its rationale for concluding that the defendant was a commercial operator subject to the Lacey Act's more stringent penalties for such individuals, yet concludes that $1,000 per violation is a significant amount. 548 F. Supp. at 46, 13 ELR 20476 (digest). Standing alone, this does not allow any conclusions regarding severity of sanctions imposed or judicial attitudes toward wildlife offenses. The authors are attempting in ongoing research to evaluate unreported cases and settlements.

134. *See, e.g.*, 19 U.S.C. §1527 (Tariff Act of 1930, proscribing the importation of protected wild mammals or birds without the appropriate documentation).

135. 18 U.S.C. §545. Proof of possession of the goods is sufficient evidence for a conviction. The section makes it a felony, subject to a fine of $10,000 or five years imprisonment, or both, to

> . . . knowingly and willfully, with intent to defraud the United States, smuggle[], or clandestinely introduce[] . . . merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper.

The fine is now increased to $250,000 or $500,000 pursuant to the Omnibus Crime Control Act. *See supra* notes 93-96.

136. 18 U.S.C. §371.

137. 18 U.S.C. §§1341-42; Interview with J. Kilbourne, U.S. Department of Justice, Wildlife and Marine Resources Section, May 26, 1987. *See, e.g.*, United States v. Knap, No. C-87-64-S (S.D. Tex. indictment filed Mar. 11, 1987).

138. The customs laws, for example have been held to authorize forfeiture even where the government has not demonstrated knowledge that the import was illegal. United States v. 53 Eclectus Parrots, 685 F.2d 1131 (9th Cir. 1982).

Moreover, "non-environmental" criminal statutes enable government enforcement officials to charge defendants with felonies where they otherwise might be limited to misdemeanor counts, as under the ESA. *See, e.g.*, United States v. Minnick (D. Ariz. indictment filed May 29, 1986) (charges brought under conspiracy, smuggling, and ESA for illegally importing rare cacti from Mexico into the United States). *See supra* text accompanying note 92.

139. United States v. Allen (S.D. Tex. July 15, 1983) (three defendants pled guilty to one felony count each of violating 18 U.S.C. §545 for buying and selling parrots knowing the birds were imported in violation of customs and quarantine laws; $2,500 fine for each and two or three years probation).

imp •menting legislation in place for effective CITES enforcement. However, the degree to which these tools are utilized will determine the role sanctions actually play in bringing about the socially responsible behavior desired by the Convention. Since the number of reported cases in this country directly addressing CITES are still relatively few,[140] definitive conclusions concerning their impact on the behavior of target groups cannot fairly be made. Yet certain trends are discernible, and cautious, tentative assessments can be made.

Judicial Reluctance

Despite the ESA's provision for strict liability for commercial importers and exporters and the Lacey Act's recently strengthened criminal and forfeiture provisions, the courts have been reluctant to impose penalties for "innocent" conduct.[141] This is consistent with common judicial attitudes towards malum prohibitum conduct, traditionally lawful, but statutorily made unlawful for reasons of social policy.[142] This judicial reluctance provided some of the impetus for Congress to "correct the . . . insufficiencies" of the pre-1981 Lacey Act, to demonstrate to the judicial branch congressional intent regarding the seriousness of wildlife trade violations.'[143]

The FWS also has perceived that courts are unwilling to impose penalties under the Lacey Act without substantial proof of foreign law. According to the Service, this can require that an official from the country of origin actually be brought into the courtroom to testify that the piece of paper entered into evidence represents an accurate statement of that country's law.'[144] This perception is not entirely shared by persons at all enforcement levels. Attorneys in the Wildlife and Marine Resources Section of the Department of Justice, responsible for litigating wildlife suits on behalf of the FWS, do not think the courts are a serious impediment in this area, pointing to the federal rules. They believe a more serious problem is simply getting a response, of any sort, from the country in question, regardless of what the "proof" is that is required: statement of the actual law, validity of a particular export permit, or accuracy of a signature on that permit.'[145]

It is possible that, if true, this situation may be undergoing some change. In *United States v. 3,210 Crusted Sides of Caiman Crocodilus Yacare*, a recent decision involving the forfeiture provisions of the ESA and Lacey Act, the court accepted certified translations of Bolivian decrees as proof that crocodile specimens had been exported illegally.'[146] The court also indicated that it did not feel bound by any reluctance to penalize "innocent" conduct,'[147] although it did not find the claimants of the forfeited wildlife to be particularly innocent. Moreover, the court stated that to accomplish the goals of CITES to prevent overexploitation of certain species through trade, "the penalties for violations . . . must be stringent."'[148] There is no doubt, however, that judicial attitudes toward wildlife violations vary widely across the country. Unfortunately, no cross-sectional data exist on how these attitude variations translate into variations in sanctions, and how wildlife inspectors and agents may change their behavior in light of judicial attitudes in their areas.

---

140. Although most of the case law on the ESA has involved non-CITES provisions, a small body of case law has begun to be developed. *See* Cayman Turtle Farms v. Andrus, 478 F. Supp. 125, 9 ELR 20416 (D.D.C. May 29, 1979), *aff'd without opinion* (D.C. Cir. Dec. 12, 1980) (regulations banning importation of sea turtle products upheld); Man Hing Ivory & Imports, Inc. v. Deukmejian, 702 F.2d 760, 13 ELR 20477 (9th Cir. 1983) (California statute banning trade in African elephant products not preempted by CITES since treaty allows stricter measures); H.J. Justin & Sons v. Deukmejian, 519 F. Supp. 1383, 12 ELR 20179 (E.D. Cal. 1981), *rev'd in part on other grounds*, 702 F.2d 758, 13 ELR 20479 (9th Cir. 1983), *cert. denied* 464 U.S. 823 (California statute banning trade in python and kangaroo products not preempted by CITES since treaty allows stricter measures); Defenders of Wildlife, Inc. v. Endangered Species Scientific Authority, 659 F.2d 168, 11 ELR 20306 (D.C. Cir. 1981), *cert. denied*, 454 U.S. 963 (reliable population estimates and kill levels required for "no detriment" finding under CITES); Defenders of Wildlife, Inc. v. Endangered Species Scientific Authority, 725 F.2d 726, 14 ELR 20188 (D.C. Cir. 1984) (1982 amendments to Endangered Species Act eliminated population estimate and kill level requirements imposed by earlier court decision for bobcat exports under CITES); United States v. 3,210 Crusted Sides of Caiman Crocodilus Yacare, 636 F. Supp. 1281, 16 ELR 20889 (S.D. Fla. 1986) (shipment subject to forfeiture where permit violates CITES requirements).

Several cases have involved CITES species but the government's action was brought under statutes other than the Endangered Species Act. *See, e.g.*, United States v. 53 Eclectus Parrots, 685 F.2d 1131 (9th Cir. 1982) (Tariff Act); United States v. Molt, 589 F.2d 1247 (3d Cir. 1978) (Tariff Act); United States v. Molt, 599 F.2d 1217 (3d Cir. 1979) (Lacey Act); United States v. Molt, 615 F.2d 141 (3d Cir. 1979) (Tariff Act, smuggling and conspiracy statutes); United States v. Molt, 631 F.2d 258 (3d Cir. 1980) (Lacey Act, smuggling statute). *See supra* text accompanying notes 134-139.

141. *See* Newell v. Baldridge, 548 F. Supp. 39, 12 ELR 20476 (digest). At the same time, the court recognized that the ESA imposed a "higher standard" on commercial operators than on ordinary individuals. 548 F. Supp. at 42. The court put the burden on the defendant to show he was in fact innocent, once the government has shown with substantial evidence that the defendant knew or should have known that the sea turtles he imported were endangered species. *Id.*

142. This can also be seen in related contexts, e.g., in Lacey Act convictions for violations involving nonendangered species. *See* United States v. Bryant, 716 F.2d 1091 (6th Cir. 1983) (defendant convicted of illegal interstate fur dealing faced maximum potential penalty of 11 years in prison and $50,000 fine; judge sentenced him to two years probation).

143. S. REP. No. 123, *supra* note 108, at 2, 1981 U.S. CODE CONG. & ADMIN. NEWS at 1749. Truly innocent conduct, of course, is likely to be protected by statute and constitution. *Id.* at 12, 1981 U.S. CODE CONG. & ADMIN. NEWS at 1759 (statement regarding innocent conduct). *See generally* Strafer, *Civil Forfeitures: Protecting the Innocent Owner*, 37 U. FLA. L. REV. 841 (1985).

144. Confidential interviews with FWS wildlife inspectors (Feb. 1985). Current and former FWS Wildlife Permit Office and Division of Law Enforcement officials are not quite willing to make this same statement, but have expressed concern to the authors regarding the serious difficulties in proving foreign law to the satisfaction of the federal courts. Yet live testimony would not appear to be strictly required. *See* FED. R. CRIM. P. 26.1 and FED. R. CIV. P. (FRCP) 44.1.

145. J. Kilbourne, *supra* note 137. There is no comprehensive review of CITES implementing legislation around the world. A few partial attempts have been made, however, primarily by NGOs, to address the proof of foreign law problem. *See* WORLD WILDLIFE FUND, LATIN AMERICAN WILDLIFE TRADE LAWS (1984); INT'L UNION FOR THE CONSERVATION OF NATURE, AFRICAN WILDLIFE LAWS (1986); *see also* CITES SECRETARIAT, INDEX OF SPECIES MENTIONED IN LEGISLATION (1981). NGOs state that the FWS was initially skeptical of the compilation concept due to the fluidity of foreign legislation. Interview with K. Fuller, World Wildlife Fund-TRAFFIC, in Washington, D.C. (Nov. 16, 1984); interview with Ginette Hemley, Director, TRAFFIC-U.S.A., in Washington, D.C. (June 8, 1987). The Service, however, has now distributed over 200 copies of the Latin American book to the ports of entry.

146. 636 F. Supp. 1281, 1285-86, 16 ELR 20889, 20891 (S.D. Fla. 1986). The court accepted the translations pursuant to FRCP 44.1. *See supra* note 144.

147. 636 F. Supp. at 1286-87, 16 ELR at 20891.

148. 636 F. Supp. at 1287, 16 ELR at 20892.

Administrative Reluctance

There is some evidence that individuals on the front lines of CITES enforcement will often choose the path of least resistance. As a result, shipments that perhaps should have been held for further inspection will be allowed through. For example, the inspector or agent may know from past experience that waiting to hear from Washington or a foreign country concerning the validity of a particular permit could take weeks, or even months, and thus may delay a shipment indefinitely. Holding a shipment can result in political pressure from the importer's congressional representative. Moreover, unless evidence of a violation is clear, the regional Department of the Interior Solicitor may order the shipment released. Even if followed up, there is a perception that the violation is unlikely to result in a significant penalty. As in many enforcement contexts, the view from the different spokes of the enforcement wheel varies. While regional supervisors may state categorically that inspectors and agents are to hold questionable shipments pending further investigation, the inspectors and agents themselves may not feel they are really able to do so.[149]

Forfeiture

Forfeiture actions appear to have been the primary action of choice for administrative proceedings within the FWS,[150] and comprise 10 to 15 percent of the civil actions instituted by the Department of Justice's Wildlife and Marine Resources Section.[151] A focus on forfeitures at the administrative level is logical, particularly when one considers together the FWS' perception of judicial reluctance to impose penalties and fines for wildlife trade violations and possible difficulties in obtaining proof of existing foreign law or in determining the validity of a particular permit. Moreover, no element of intent need be proven for forfeiture of the unlawfully imported or exported wildlife itself,[152] and no resort to the courts need be taken at all for wildlife valued at $100,000 or less.[153]

The forfeiture provisions of both the ESA and the Lacey Act have generally fared better in the courts than civil or criminal penalties.[154] This may be because agencies and the courts have generally had more experience with the concept of forfeiture in the context of violations of customs and drug-related laws,[155] and the wildlife forfeiture provisions incorporate by reference the customs procedures.[156]

Forfeitures by themselves, however, may or may not have the desired deterrent effect with regard to import/export violations. There is generally a large markup between the cost of merchandise to an importer and the retail value of the goods. If the profit margin is high enough, forfeiture can be simply be thought of as a price of doing business, as opposed to an effective deterrent. Exactly what impact forfeiture has on subsequent behavior on the part of the violator is not known. FWS officials argue that repeat offenders are not common, and that this indicates that getting caught once really does have an impact on importer behavior.[157] Yet the potential for evading detection of illegal shipments is so pervasive, e.g., through mislabeling shipments or by including shipments in uninspected cargos such as sea-going containers, that this behavior change cannot be safely assumed.

Although the case law is still sparse, certain trends are clear. The courts will look to established forfeiture case law for determination of most basic issues.[158] The *Caiman Crocodilus Yacare* court, for example, rejected an argument by the claimants that it should make a distinction between forfeiture proceedings brought for illegally imported wildlife and proceedings brought for items connected to illegal drug trade.[159]

The burden of proof is on the government to establish probable cause, but once that is shown, the burden shifts to the defendant to show by a preponderance of the evidence that the property is not in fact subject to forfeiture.[160] Courts have also relied on established forfeiture law in rejecting claimants' defense of innocence, noting that innocence is not, standing alone, a sufficient defense to forfeiture.[161] Moreover, the entire res is subject to forfeiture, not just the portion unlawfully imported.[162]

149. Confidential interviews with FWS inspectors and agents (Feb. 1985; Mar.-Apr. 1987).

150. A large number of forfeitures are handled at the local or regional level by FWS directly, and are not forwarded to the Department of Justice for further action.

151. James Kilbourne, *supra* note 137. The remainder of the Section's civil caseload is divided approximately equally among the following: ESA-related cases (most often citizen suits with the government as defendant); civil penalty enforcement actions and civil penalty assessment defenses; and marine species' cases referred from the Department of Commerce. *Id.* It is unclear, however, whether these statistics are representative of wildlife cases throughout the country, since many cases are referred directly to individual United States Attorneys' offices.

152. ESA §11(e)(4)(A), 16 U.S.C. §1540(e)(4)(A), ELR STAT. 41832:5; Lacey Act §5(a), 16 U.S.C. §3374(a); Tariff Act of 1930, §527, 19 U.S.C. §1527. *See* United States v. Fifty- three (53) Eclectus Parrots, 685 F.2d 1131 (9th Cir. 1982) (19 U.S.C. §1527 prescribes forfeiture without regard to culpability).

153. *See supra* note 104 and accompanying text.

154. *See* United States v. 3,210 Crusted Sides of Caiman Crocodilus Yacare, 636 F. Supp. 1281, 16 ELR 20889; United States v. 100 Black Palm Cockatoos and Eclectus Parrots (S.D. Fla. Jan. 31, 1984). The importer in *100 Black Palm Cockatoos* forfeited a shipment worth between $500,000 and $1 million on the American market despite the importers' good faith belief in the legitimacy of the import and their reliance on a tentative preclearance by the FWS. The importers had already spent more than $125,000 in the purchase, shipment, and quarantine of the birds. *But see* Carpenter v. Andrus, 485 F. Supp. 320 (D. Del. 1980) (skin and skull of leopard sent to United States through mistake of shipping agent not subject to forfeiture). At least one commentator considers the ESA's forfeiture provisions to be "of potentially even greater magnitude than . . . criminal and civil penalties." M. BEAN, *supra* note 20, at 347.

155. *See, e.g.*, 18 U.S.C. §545 (forfeiture provision for smuggling violations); 18 U.S.C. §1963 (forfeiture provision of racketeering statute); 19 U.S.C. §1537(b) (forfeiture prescribed for illegally import of birds); 21 U.S.C. §853 (forfeiture provision in continuing narcotics enterprise statute).

156. ESA §11(e)(5), 16 U.S.C. 1540(e)(5), ELR STAT. 41832:5 (incorporating customs laws for forfeiture of a vessel); Lacey Act §5(b), 16 U.S.C. §3374(b) (incorporating customs laws for forfeiture of property in general). The wording is very similar to that used to incorporate the customs laws in federal drug statutes. *See* 21 U.S.C. §881(d).

157. D. McMullen, *supra* note 86; confidential interviews with FWS wildlife agents (Feb. 1985).

158. United States v. 3,210 Crusted Sides of Caiman Crocodilus Yacare, 636 F. Supp. at 1283, 16 ELR at 20890 (citing cases interpreting federal narcotics statutes for its determination of standing).

159. 636 F. Supp. at 1286, 16 ELR at 20891.

160. *Id. See also* United States v. Fifty-three (53) Eclectus Parrots, 685 F.2d 1131, 1134 (9th Cir. 1982).

161. *Caiman Crocodilus Yacare*, 636 F. Supp. at 1286, 16 ELR at 20891; *Fifty-three (53) Eclectus Parrots*, 685 F.2d at 1136-1137.

162. *Caiman Crocodilus Yacare*, 636 F. Supp. at 1287, 16 ELR at 20891.

Deciphering Congressional Commitment

Some indication of perceived legislative commitment to the goals of CITES can be derived from the actions taken in the rare instances in which legislative involvement has occurred in the CITES process.

☐ *United States' Reservations*: Indeed, Congress has shown some ambivalence about its commitment to the CITES process. In one instance, Congress threatened to emasculate the very concept of international cooperation embedded in the treaty by requiring the United States to enter a reservation whenever it disagreed with an action taken by the majority of CITES Parties. In 1981, at the third biennial Conference of the Parties, the Parties made a controversial decision to list all parrots on Appendix II.[163] The rationale for the inclusion of some 300 species, many of which were not in trade, was that it was necessary as a protective measure since depletion of the populations of trade species would result in a shift to currently untraded, unprotected species.[164] Concern was expressed by some Parties, including the United States, that such a mass listing was in contravention of the criteria established by the Parties for listing on the appendices and that a mass listing on Appendix II, under the argument that it was necessary to control species similar to those already in trade, was inappropriate.[165]

Although the United States opposed the proposal, and contemplated the possibility of entering a reservation against the listing, it did not in fact do so within the 90-day period and has abided by the requirements imposed by the listing.[166]

Congress reacted to this incident in the 1982 ESA Amendments. Citing its "alarm[] over past practices in which it appeared that the decision on whether or not to enter a reservation was based on political, and not biological, factors,"[167] it added a paragraph requiring a report to Congress whenever the United States delegation to the Conference of the Parties votes against the inclusion of any species on the CITES appendices but a reservation is not subsequently entered.[168]

☐ *Regulation of Trade in Appendix II Species*: In 1981, the District of Columbia Circuit Court of Appeals ruled in *Defenders of Wildlife v. Endangered Species Scientific Authority*[169] *(Defenders I)* that the government had incorrectly applied the requirement of Article IV of CITES that trade in Appendix II species may only be allowed upon a finding that such trade will not be detrimental to the survival of the species.[170] The court held that the use of population trend data to determine appropriate bobcat harvest levels in the states violated this requirement of a "no detriment" finding since the data did not provide the total bobcat population in each state or the number to be killed in a particular season in each state.[171]

Congress reacted swiftly. The 1982 ESA Amendments added a new paragraph to §8A, the CITES implementation section, specifically stating that the Secretary need not make estimates of population size in making the "no detriment" finding.[172] The District of Columbia Circuit subsequently held that Congress had overruled its earlier decision.[173] It should be noted that a continuing concern of the Parties has been the inability of many wildlife-exporting countries to properly implement the "no detriment" provisions of the Convention.[174] The argument used by these countries is that they simply do not have the biological data necessary to fully evaluate the "no detriment" issue with regard to a particular species export. Although there is some debate as to how much population data is necessary to arrive at a defensible "no detriment" finding, Congress' action could be interpreted as condoning decisionmaking under CITES in the absence of adequate biological data.

Conclusions

The full picture of United States CITES implementation cannot be evaluated through this initial look at the enforcement infrastructure and its limited use of legal sanctions. Although there are instances of enforcement enthusiasm with respect to CITES violations in the United States, it

The court's rationale for this appears to be that penalties for violations of CITES must be severe enough to achieve CITES' goals and further the intent and effectiveness of CITES and the ESA. 636 F. Supp. at 1287, 16 ELR at 20892.

Interestingly, several cases, including *Caiman Crocodilus Yacare* and *100 Black Palm Cockatoos* came out of the district courts in Florida. Miami is one of the nine designated ports of entry for wildlife entering the country, and thus is a likely enforcement investigative checkpoint. The favorable tenor of the decisions may indicate judicial familiarity with forfeiture actions, and thus judicial understanding of enforcement issues, since Miami is also a major port of entry for the illegal drug trade. *See supra* text accompanying notes 154-156.

163. *Amendments to Appendices I and II of the Convention*, in PROCEEDINGS OF THE THIRD MEETING, *supra* note 31, at 76.

164. *Summary Report of the Plenary Session*, Plen. 3.11, in PROCEEDINGS OF THE THIRD MEETING, *supra* note 31, at 142.

165. *Id.*

166. *See* 50 C.F.R. §23.23 (1986). The 1981 mass listing of parrots was not the first time the Parties made such a listing of numerous species within the same family where each individual species were not themselves likely to be threatened by trade. In 1976, all cat species were also listed on Appendix II. CITES Secretariat, Amendments to Appendices I and II of the Convention, in PROCEEDINGS OF THE FIRST MEETING, *supra* note 22, at 48 (1977).

167. H.R. REP. No. 567, 97th Cong., 2d Sess. 30 (1982), *reprinted in* 1982 UNITED STATES CODE CONG. & ADMIN. NEWS 2807, 2830.

168. §8A(d), 16 U.S.C. §1537a(d), ELR STAT. 41832:1. The report is to be submitted to the House Committee on Merchant Marine and Fisheries and the Senate Committee on the Environment and Public Works.

169. 659 F.2d 168, 11 ELR 20306 (D.C. Cir. 1981), *cert. denied*, 454 U.S. 963.

170. 659 F.2d at 178, 11 ELR at 20312; *see* CITES, *supra* note 7, art. IV, para. 2(a), ELR STAT. 40336. *See supra* text accompanying notes 18-19.

171. 659 F.2d at 178, 11 ELR at 20312.

172. This section provides:

> The Secretary shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice.

ESA §8A(c)(2), 16 U.S.C. §1537a(c)(2), ELR STAT. 41832:1.

173. Defenders of Wildlife v. Endangered Species Scientific Authority (*Defenders II*), 725 F.2d 726, 14 ELR 20188 (D.C. Cir. 1984). The court relied on the legislative history behind the amendment, in which Congress expressed an intent to overrule the *Defenders I* decision. *See* H.R. REP. No. 567, *supra* note 167, at 29, in 1982 U.S. CODE CONG. & ADMIN. NEWS at 2829; S. REP. No. 418, 97th Cong., 2d Sess. 22 (1982); H. CONF. REP. No. 835, 97th Cong., 2d Sess. 28 (1982), *reprinted in* 1982 U.S. CODE CONG. & ADMIN. NEWS, *supra*, at 2869.

174. *See, e.g., Regulation of Trade in Appendix II Wildlife and Implementation of Article IV, Paragraph 3, of the Convention*, Conf. 4.7, in PROCEEDINGS OF THE FOURTH MEETING, *supra* note 30, at 49.

is unclear what impact the sanctions as written and as actually imposed are actually having on behavior of wildlife traders and purchasers, and ultimately on the neutralization of trade impacts on the biological status of species. Measures to decrease demand for wildlife and its products have been slow to develop,[175] and as is evident in other areas such as the drug trade, demand will generally be met by supply. The illegal wildlife trade into and out of the United States has certainly continued to flourish in the face of enforcement actions thus far undertaken. Other evidence would be required to show that behavioral changes are actually taking place.

There can be no doubt that implementation of CITES is very difficult to achieve. There are too many shipments to sufficiently inspect for evidence of illegal trade. Documentation difficulties abound, making enforcement certainty impossible. Wildlife inspectors and agents face political pressures to allow questionable shipments through. These pressures may result in a legalistic enforcement strategy that does not relate to the biological priorities.[176] Finally, there may not be much inclination in the various branches of government to focus on effectively penalizing violations.

CITES is a legal measure where, due to the many conceptual and actual implementation difficulties involved, success needs to be proven rather than assumed. With other laws, a case study showing failure might be a surprise; with CITES, a case study showing success would be the surprise. The difficulties encountered in implementing CITES in the United States can only be magnified in other countries with fewer resources and less sophisticated infrastructure to dedicate to the issue.

175. NGOs have been making efforts in this area. *See, e.g., Snuggling with Smugglers*, 7 TRAFFIC-U.S.A., No. 2/3, 1987, at 20 (discussing World Wildlife Fund's public information campaign); *Airlines Warn Tourists*, 2 TRAFFIC-U.S.A., No. 2, 1980, at 6 (discussing distribution by airlines of FWS brochures).

176. In one incident witnessed by the authors, there was a small discrepancy between the number of ivory pieces listed on the invoice and the number allowed in the accompanying permit, in a shipment consisting of more than 5,000 pieces. Although the discrepancy was meaningless in terms of its biological implications for the African elephant, the FWS inspector indicated that a detailed counting of the shipment would likely be undertaken. At the same time, live shipments of wildlife were able to avoid inspection entirely by arriving outside of normal business hours. Interviews with FWS wildlife inspectors and agents (Feb. and Apr. 1985). This is no longer the case, at least in certain ports of entry. D. McMullen, *supra* note 86. For a general discussion of the issues and problems involved in regulatory enforcement, see E. Bardach & R. Kagan, Going by the Book: The Problem of Regulatory Unreasonableness (1982).

SOCIETY FOR ANIMAL PROTECTIVE LEGISLATION
P. O. Box 3719
Georgetown Station
Washington, D.C. 20007

(202) 337-2334

STATEMENT ON THE ADMINISTRATION OF THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA A... FLORA AND ITS EFFECT ON PROTECTION OF THREATENED AND ENDANGERED ANIMALS

by Christine Stevens, Secretary

July 14, 1988

The Society for Animal Protective Legislation and the Animal Welfare Institute, on whose behalf I present this testimony, have been represented at each of the biennial meetings of the Parties of CITES since the convention was written. We began by attending the three weeks of meetings when ninety-odd nations convened in the State Department auditorium in 1973. A spirit of hope and confidence that the work would succeed in preventing extinctions prevailed at that time. I remember that we presented a copy of the recording of the Songs of the Humpback Whale to each head of the delegation and that one of the plenary sessions opened with the playing of three minutes from that moving voice from the sea.

Throughout the world, CITES is referred to as "The Washington Convention" because of that splendid initial meeting which set it off with such optimism. At subsequent meetings, many valuable decisions were taken, readily adopted by men and women of good will looking forward to a future in which nations would assist one another to maintain healthy populations of wildlife everywhere. For example, at the important Berne meeting where the "Berne criteria" for listing species were adopted, the Parties agreed that commercial sale of wild caught species for the pet trade should be phased out. This wise decision has not been honored. On the contrary, this trade has greatly increased. It has been necessary to put several of the bird species most lucrative to the pet trade on Appendix I in order to try to protect them from the rapacity of the big bird dealers.

For example at the 1987 Meeting of the Parties, the Hyacinth Macaw and Military Macaw were added to Appendix I. The Scarlet Macaw was listed at the 1985 meeting. All have been pushed towards extinction by the pet trade.

When the Berne resolution to phase out wild caught pets in support of greater protection for psittacine birds was used to support a proposal, the chief lobbyist for the Pet Industry Joint Advisory Council spoke scornfully of the decision, asserting that it was outdated. The intense lobbying by the Alliance of other commercial interests defeated Uruguay's proposal to limit numbers of birds per shipment of psittacines whose status in the wild is unknown. Thus the greedy drain on native populations continues unhindered by needed CITES regulations.

When national laws prohibit their export, the international pet trade turns to bribing, poaching and smuggling, as exemplified by the recent incident in which Ghanaian

authorities apprehended an Exotic Fauna of Los Angeles agent. He had already boarded the plane on which the 2000 African grey parrots he had acquired were being loaded, when an alert observer summoned law enforcement officers. Ghana prohibits export of these wild birds. African grey parrots are very intelligent and much prized in the pet trade. So Exotic Fauna of Los Angeles thought it had made a killing till its employee agent was sentenced and jailed together with three others involved. A copy of the People's Daily Graphic article (attached) gives additional details.

All too often, however, smuggled parrots slip by authorities both in their native lands and in our own country.

Vested interests that profit from exploitation of wildlife have grown very bold in recent years. At the CITES meeting last July in Ottawa, national delegates were surprised to find in their document boxes a lengthy diatribe against a large number of sound conservation proposals on which votes would be taken during the two-week meeting. The paper had a red cover, but no signature or other indication of the source of this uniformly bad advice. After questions in plenary as to who they were, they issued the following list:

Federation of Commercial Bird Importers
Canadian Wildlife Federation
Safari Club International
Wildlife Legislative Fund of America
Pet Industry Joint Advisory Council
International Foundation for the Conservation of Game
Fur Institute of Canada
Federation Argentina De La Commercializacione
Industrializacion De La Fauna
Committee for the Conservation of Chimpanzees, Arbeitskreis fur Erhaltung von Schimpansen (AES)
Fur Council of Canada
Fur Trade Association of Canada
National Trappers Association
European Aviculture Council
International Professional Hunters Association
Louisiana Department of Wildlife and Fisheries

The group expressed great indignation over the CITES report on infractions. They accused the Secretariat of being "overzealous" for reporting "54 violations involving more than 25 parties." They said the report was "punitive, condescending and coercive".

Non-governmental organizations that stand for the animals and plants that are under heavy pressure from trade are in danger of being overwhelmed by the consumptive commercial interests who would like to run CITES for their own ends.

Proposals which would have crippled the capabilities of humanitarian and conservationist NGO's were vigorously advocated by the Secretary-General each time he visited the United States prior to the 1987 meeting of the parties. Fortunately, the determined opposition we all expressed prevented disastrous changes in the rules of the meeting. We also came out with flying colors from a GAO investigation of allegations that undue influence was being exerted by NGOs dedicated to animal protection. We'll continue to fight whenever it is necessary to keep CITES from becoming a mere puppet for exploitative interests. These oversight hearings are important in establishing the concern of Congress that CITES follow the goals from which it was created.

One of these goals, expressed repeatedly in the text of the convention, is prevention of "injury, damage to health, and cruel treatment" of living mammals, birds and other animals. I would submit for the use of this Subcommittee a copy of an illustrated report by that name, prepared by the Environmental Investigation Agency and its subsequent report on The Trade in Live Wildlife focusing on the approximately 20 million wild birds captured for the pet trade each year in Senegal. Half of these beautiful, delicate creatures die even before they have been loaded on planes to Europe, Japan, and the United States. Clearly, the intent of CITES is being grossly violated, yet massive lobbying by PIJAC and its allies opposes, as I mentioned earlier, even the most modest proposals for reducing death tolls.

The documentary film taken by the Environmental Investigation Agency shows the terrible suffering to which birds caught for the pet trade are subjected. It is high time that the recommendation of the CITES nations to phase out commerce in wildlife for the pet industry, be put into practice. I urge this subcommittee to call for leadership by the US delegation in achieving this goal at the 1989 CITES meeting.

To turn to another issue of major importance which must be addressed at that meeting, commercial ivory traders have made a mockery of CITES' inept stab at regulation. The US Government which heads the CITES Steering Committee hasn't even managed to get together a delegation to visit the United Arab Emirates (UAE) which is brazenly flouting all attempts by African nations to prevent poaching of their elephants and smuggling of the ivory. Last July CITES passed a resolution to exert "economic, diplomatic and political pressure" on the UAE and Burundi to stop their illegal international commerce in ivory.

On the floor of the plenary session, Clark Bavin, Chief of the Fish & Wildlife Service Law Enforcement Division supported Kenya and Tanazania and said,

> We must work together to save the African elephant so it does not become endangered or, even worse, extinct. Traders are stealing from the African people. The United States will initiate diplomatic discussion with United Arab Emirates. We are prepared to use economic and political means.

But these brave words have not been carried through by Mr. Bavin's superiors. The CITES resolution remains words without action.

The world's biggest consumer of ivory is Japan, a nation whose laissez-faire attitude on whales has earned it a worldwide reputation for disregarding scientific opinion except when it has paid for the "research." Its habit of taking "reservations" extends to a number of species listed by CITES which Japanese producers of luxury items continue to sell. The representative of Japan's Ministry of Industry and Trade at the CITES meeting dangled ivory beads and trinkets before the delegates and announced that "Japan has no illegal trade." But he insisted on noting for the record that Japan wished to delete any reference to economic and political measures against Burundi and UAE!

Thus the two non-CITES nations who have incurred the honest outrage of countries who are battling to prevent the decimation of their natural heritage, get the green light

from the country that uses up the lion's share of ivory on the world market!

I urge this Subcommittee to send a strong message to the Departments of Interior and State to end their unconscionable delay and meek acceptance of the CITES Secretariat's chronic failure to halt illegal trade in ivory. As Mbaele ma Mankoto, head of the delegation of Zaire, summed it up: "Traffickers were favored and Parties were penalized." With declines in the range of 90% documented in East Africa, we cannot afford to wait longer. I would submit two important articles by the leading student of elephants, Iain Douglas-Hamilton, the first from ORYX, the second from SWARA. They give some of the appalling statistics. For even more complete information the Subcommittee may wish to consult African Elephant Database Project, Global Resource Information Database, Nairobi, June 1987. Promises and cash from ivory dealers' associations appear to have been flowing freely. But the serious commitment to protection of elephants which the United States and other nations must make if the disastrous trend of the last ten years in East Africa is to be halted, has not even begun. Our country should take a leadership role.

Others will report on the sorry state of the CITES Secretariat. The careful selection of staff dedicated to prevention of the decimation of elephants and other threatened and endangered species is essential. The help of this distinguished Subcommittee in bringing this about would be extremely valuable. The future of the Convention and the species it was created to protect are at stake.

PEOPLE'S DAILY GRAPHIC, Thursday, June 16, 1988, Page 9

Five held over illegal exportation of parrots

• Darrel Marion Alexander

• Christian Leslie Mills

• Wabi Bello

• N. K. Gyimah

• Two Americans and three Ghanaians including a customs officer have been placed in police custody for attempting to illegally export 2,000 African grey parrots last week. A ban has been placed on the exportation of this specie since 1980.

Those arrested are Mr Darrel Marion Alexander, a dealer in exotic birds and Mr Kirk Stubbs, who is now on admission at the 37 Military Hospital, both Americans, Mr Christian Leslie Mills, Mr Wabi Bello, both Ghanaian dealers in parrots and Mr N. K. Gyimah, a Ghanaian Customs Officer.

The parrots in 33 containers were impounded at the Kotoka International Airport by Lt-Cdr. Assassie Gyimah just before they were about to be exported on a British Caledonian aircraft last Monday night.

According to a source at the Accra Zoo where the parrots are being kept, a lot of them died initially because of the poor condition in which they were kept before the seizure. He, however, said the death rate has reduced drastically due to proper feeding and medical attention.

The source disclosed that about ¢20,000 is being spent daily on their feeding.

Top picture shows those under arrest.

Above picture shows some of the parrots at the Accra Zoo yesterday.

Pictures by **Dan Owusu**.

STATEMENT

of

ROGER E. MCMANUS
PRESIDENT
CENTER FOR ENVIRONMENTAL EDUCATION

and

CHAIRMAN
TRADE SPECIALIST GROUP
INTERNATIONAL UNION FOR CONSERVATION OF NATURE AND NATURAL RESOURCES
SPECIES SURVIVAL COMMISSION

before the

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

of the

House Committee on Merchant Marine and Fisheries

on

U.S. Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

July 14, 1988

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you to present my views on implementation by the United States of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). With the increasing pressures being brought to bear on such diverse ecosystems as tropical moist forests and coral reefs, commercial exploitation of the many species they harbor for international trade takes on a growing significance. I am pleased to have been invited to contribute recommendations as to how the U.S. can improve its efforts to contain the adverse effects of this trade.

My name is Roger McManus. I am President of the Center for Environmental Education, a private organization of 110,000 members worldwide devoted to the conservation of marine wildlife and their habitats. I also chair the Trade Specialist Group of the Species Survival Commission of the International Union for Conservation of Nature and Natural Resources, the world's largest conservation consortium, which includes governments, government agencies, and non-governmental organizations, including the U.S. Fish and Wildlife Service and the Center for Environmental Education, as members.

Since our founding in 1972, the Center for Environmental Education has been active in promoting research and public awareness and developing and supporting policy initiatives aimed at conserving threatened marine species. Until recently, our major activities within the CITES arena have focused largely on sea turtles, a group of species that, despite benefiting from an international trade prohibition associated with a CITES Appendix I listing, continue to be traded in the tens of thousands every year. Since 1986, our organizatiion has funded the activities of the IUCN/SSC Trade Specialist Group in an effort to enhance the scientific integrity of the CITES treaty and its general effectiveness in promoting species conservation.

It is primarily from the perspective of the Trade Specialist Group that I would like to address my personal views on CITES and the United States' role in its implementation, concerned as IUCN is with the rational use of natural resources, including wildlife. As many of my colleagues here know, IUCN operates within the confines of the World Conservation Strategy, prepared in 1980 in conjunction with the World Wildlife Fund and United Nations Environment Programme to promote living resource conservation for sustainable development. CITES, originally drafted by IUCN, is just one of many mechanisms designed over the years since the 1972 UN Converence on the Human Environment to assist in maintaining the delicate balance between resource utilization and conservation.

Increasingly CITES has provided a framework for creative, aggressive strategies for wildlife resource conservation that include commercialization and has seen some successes as a result, namely the comeback in our own country of the American alligator.

Yet despite some successes, CITES has a great deal more to achieve before it can bring wildlife trade to levels that many wild populations can support. And, countries like the United States have considerable progress to make in ensuring that their wildlife trade policies and trade controls contribute to that end.

To illustrate the seriousness of the situation we face, I would like to draw your attention to a report that is soon to be published by the IUCN Conservation Monitoring Centre, based in Cambridge, U.K., on behalf of CITES. Entitled "Significant Trade in CITES Appendix II Species," this report is the result of several years of research and inquiry carried out under the aegis of a CITES working group chaired, incidentally, by our own U.S. CITES Scientific Authority. The project was initiated by the CITES Parties and aimed at assessing the conservation impact of trade in some 150 wildlife species listed on CITES Appendix II.

Just to explain briefly, Mr. Chairman, a CITES Appendix II species, unlike an Appendix I species, is allowed into international trade on the basis of an export permit issued by a country's "Management Authority." The Convention provides for issuance of an export permit once a "Scientific

Authority" has determined that the export will not be detrimental to the wild population of the species in question and, subsequently, that the Management Authority has determined the specimens in question were legally obtained. One example of the challenges faced in ensuring the scientific credibility of the treaty is the fact that 30% of the current CITES Parties have yet to officially designate a Scientific Authority to comply with these permit-issuing requirements.

The preliminary findings of the CITES Significant Trade Study corroborate long-held concerns that export permits for many Appendix II species are being issued by Management Authorities without the proper findings being made by the Scientific Authorities. Specifically, of the 145 species investigated, 11 were identified as "probably" being subject to unsustainable trade and 85 were identified as being too little known for any assessment to be made of trade's impact on their wild populations. Hence, the trade situation of 2/3 of the species in the study set appears cause for concern. Of these 96 species, 3 were moved to CITES Appendix I at last year's CITES meeting in Ottawa. The remaining 93 of these "problem" and "possible problem" species are still being traded at levels impossible to assess for their conservation impact.

To give you an idea of what this trade is, I would like to provide a few examples:

> The Fischer's lovebird, an East African parrot species, was traded in one of the years studied at 56,000 specimens.
>
> The blue-fronted amazon, a popular Latin American parrot, was imported into the U.S. alone at over 25,000 individuals in 1985.
>
> Boa constrictors were traded in 100,000 skins per annum over the 4-year study period in addition to thousands of live animals for the pet trade.
>
> The reticulated python, currently in vogue as trim for sunglasses, was traded at an average of 297,000 skins per annum over the same 4-year period.

Needless to say, the list goes on and on.

But as you, I, and the Fish and Wildlife Service know so well, numbers in trade alone--although often quite astonishing--do not mean a great deal. We must compare those data with scientific data on population, distribution, reproductive capacity, as well as sensitivity to other threats, in order to determine sustainable levels of exploitation. Without that data, scientists and policy makers have considerable difficulties deciding what trade controls are appropriate. And so, the trade continues, and only slowly do conservation organizations, and the CITES Secretariat locate the funds to carry out the field surveys needed to make the appropriate management decisions.

In recognition of the preliminary findings of the CITES Significant Trade Study, the CITES Parties, at last year's meeting in Ottawa, endorsed the recommendations of the Significant Trade Working Group that the Secretariat seek the necessary funding for projects investigating the status and trade in certain priority taxa. While funds for some projects have been provided and some projects are now under way, many species still await the field biologist's attention and increased Convention oversight.

Increased Convention oversight of CITES-listed plant and animal species was provided for by the last Conference of the Parties through newly established Animals and Plants Committees. In the year since their coming into being, these committees have failed to meet, apparently due to lack of financial resources needed to initiate their work.

Only a few months ago, some of our colleagues testified before the House Subcommittee on Foreign Operations in support of full payment by the U.S. of its contribution to CITES. We are anxious to hear Congress' final decision on the matter and are hopeful that an increase in funds from the U.S. will enable CITES to convene the Animals and Plants Committees and pursue efforts to improve the scientific foundation for much of the world's wildlife trade.

But although a greater financial contribution to CITES from the U.S. will certainly be a positive step for CITES implementation, there is a great deal more the U.S. could and should do in improving CITES' record in promoting sustainable use of wildlife resources. Unlike any other country except, perhaps, Japan, the world's largest per capita wildlife consumer, the United States is in a position to take unilateral measures that would make a significant contribution to stemming some of the more problematic of the world's wildlife trades. Moreover, its importance as an import market assures it of considerable leverage in negotiations with other countries as to measures they should adopt to increase their controls on wildlife exports.

As a case in point, I would like to draw your attention to action taken in 1986 by the U.S. Government with respect to Singapore, a country long criticized for its role as a transshipment point for ivory, rhino horn, crocodile skins, tortoiseshell, and other valuable commodities from threatened or protected species. Until two years ago, Singapore was not a party to CITES and, as such, was not bound by the treaty's restrictions on trade. Moreover, Singapore was gaining notoriety as a re-exporter of CITES wildlife of questionable origin. After making little progress in securing Singapore's cooperation in ensuring the legality of CITES trade through that country, the Service suspended all imports of wildlife products from Singapore. One of the conditions for reopening trade with Singapore was that it accede to CITES. As a result, Singapore became a CITES Party and initiated some trade control measures. CITES membership alone does not guarantee effective implementation of CITES controls, however, and it appears that the Singapore authorities may need further pressure from the United States to improve their implementation of the treaty.

More recently, notice from the Fish and Wildlife Service that it would ban all ivory imports from any country found to be trading in any of the 80-odd metric tons of illegal ivory now sitting in Burundi has reportedly prompted the Hong Kong authorities to announce to the U.S. State Department that as of this July it will be controlling all imports of worked ivory, thus closing a loophole that has allowed that country to trade in ivory from Burundi and other illegal sources.

These are two examples of progress made due to the U.S.' taking an aggressive stance on its wildlife imports. I would like to propose several additional instances where the U.S. might adopt a similar posture to solve an apparent conservation problem:

Haiti. All of us are aware of the gravity of the political, economic, and ecological situation in which Haiti finds itself. The country environmental profile for Haiti, funded by the U.S. Agency for International Development and published in 1985, recommended with considerable urgency that measures be taken immediately to assess the impact of Haiti's wildlife trade and bring it under control. It specifically recommended that Haiti's trade in wild orchids and tree ferns and in threatened and endangered species such as sea turtles, certain corals, aquarium fish, and reptiles be stopped. Yet, three years later, despite Haiti's enactment of legislation banning trade in "wild fauna in general," the U.S. continues to import wildlife from Haiti. Its 1987 imports of corals from Haiti totalled 18 metric tons. And, Haiti continues to export large quantities of sea turtle shell to Japan, almost 3 metric tons in 1987 alone. A CITES non-Party, a government in chaos, protective legislation, policy recommendations from another U.S.

government agency, and the U.S. has not seen fit to take any measures to exert pressure on Haiti to accede to CITES and abide by the CITES regime or to stem this trade by reducing or disallowing imports from that country.

Philippines. The almost uncanny similarity with Haiti takes on even greater proportions where wildlife trade is concerned. In addition to other commodities, the U.S. imports several hundred tons of corals from the Philippines every year, despite the fact that export bans have been in place for most of the past ten years. The Philippine coral export ban was reinstituted in 1986, but according to U.S. import statistics, the U.S. has continued to import virtually the same quantities of coral from that country. In 1987, these imports totalled 706 tons, through March of this year, 508 tons. While the legality of this trade is certainly open to question, given our U.S. Lacey Act prohibiting imports into the U.S. of species protected in their countries of origin, the scientific basis for the trade would seem ample justification for the U.S. to exercise more authority in refusing these shipments. Our most current information estimates that only some 30% of the Philippines' once extensive coral reefs are still healthy due to dredging, pollution, use of poisons in fishing, and collection for international trade. What more information does the Service need before it will take action to curtail these imports?

Jamaica. Like Haiti, a CITES non-Party, Jamaica exports a variety of wildlife commodities to the U.S. and other countries. Its 1987 exports of sea turtle shell to Japan amounted to almost 4 metric tons. Its trade to the U.S. in CITES Appendix II orchids included 5 of the 16 species mentioned in that country's AID-funded country environmental profile as being rare, threatened, or endangered.

More close to home is the U.S. Pacific Trust Territory, soon to be defunct upon ratification by the people of Palau of their compact of free association with the United States. In this series of islands live nine species of flying foxes, or fruit bats, all of them classified by IUCN as extinct, endangered, rare, or vulnerable. While these bats are often considered as agricultural pests in some parts of the world, botanists, ecologists and chiropterologists are increasingly becoming aware of the importance of the role these animals play as pollinators and seed dispersers in tropical and sub-tropical forest ecosystems. On Guam, for instance, one researcher has estimated that 40% of the island's tree species are dependent on bats for seed dispersal and has identified these trees as being the most dominant of the island's forest species in terms of size and abundance. While once numerous, these bats have in recent years, seen their populations decline due to destruction of their habitat for agriculture and urbanization, natural calamities, and human exploitation. The fact of the matter is that these animals are considered a delicacy by the Chamorro peoples of Guam and the neighboring Commonwealth of the Northern Marianas, both under U.S. trade jurisdiction. But where fruit bat populations may at one time have been able to support a certain local harvest, increasing commercialization has resulted in intense hunting pressure and crashes in their populations on islands such as Guam and Yap. And, importers from Guam and the Northern Marianas are looking further afield, to neighboring islands with small populations and to the Philippines and Papua New Guinea to meet the demand. At last year's CITES meeting, these 9 bat species were placed on CITES Appendix II, although they may well have warranted further protection under Appendix I. Whatever the listing, the Fish and Wildlife Service appears to be showing little concern over the problem. Contacts in Guam inform that they still have not been officially notified by the Fish and Wildlife Service of the CITES listing and fear that the absence of any Fish and Wildlife personnel on the island will undercut full monitoring of the trade. As in other instances where import into the U.S. is the primary issue, the U.S. could institute measures to stem the adverse effects of this trade but appears reluctant to do so.

I could cite many more examples where the U.S. could amplify the effectiveness of CITES in achieving its goals but will instead close with a few specific recommendations:

1. The U.S. Fish and Wildlife Service must make a commitment to the scientific basis for its extensive import trade in both CITES and non-CITES species from both CITES non-Parties and CITES Parties. As the situation currently stands, the Service appears to be exercising little review of the scientific findings made for imports of wildlife species into the U.S., given the following: 1) that, as mentioned above, many CITES Parties do not have Scientific Authorities to make non-detriment findings; 2) that, as demonstrated by the CITES Significant Trade Study, many Appendix II species are not sufficiently known to make a non-detriment finding; and 3) that for non-CITES species there appears to be no import requirement or record other than an importer-completed import declaration form. In light of this, the U.S. should actively pursue initiating a policy of scientific review for wildlife imports, much as the European Economic Community has done, through requiring additional information from countries of origin regarding the legal and conservation status of exported species. The U.S. might begin, for example, with CITES Significant Trade Species. Or, in anticipation of the next CITES meeting, it might start with non-CITES species imported into the U.S. For both sets of species, where there is insufficient evidence available to substantiate a non-detriment finding from an exporting country, the United States should consider:

   a. for CITES non-Parties, suspending wildlife imports contingent upon the country's acceding to CITES and its Scientific Authority's providing data to determine sustainable levels of trade for export species;

   b. for CITES Parties, suspending wildlife imports or establishing import quotas until such a time as data is available to determine sustainable levels of trade in export species.

In both of these instances, I would encourage the U.S. to consult as much as possible with the countries in question, the CITES Secretariat, and the scientific community, including IUCN's Species Survival Commission, in order that these decisions be made judiciously and with the greatest overall effectiveness for the Convention. I would also encourage the U.S. to follow up on an earlier initiative to promote the designation of Scientific Authorities by CITES Parties but would add that the designation of a Scientific Authority may not, in itself, be sufficient. Hence, I would urge the U.S. Fish and Wildlife Service, in conjunction with CITES, to cooperate as completely as possible in assisting Scientific Authorities to improve their ability to make CITES non-detriment findings and to provide technical assistance where possible.

2. In the broader CITES arena, the U.S. should make a commitment to support as energetically as possible the new CITES Animal and Plant Committees and to make financial resources and expertise available to ensure they regularly meet and review the impact of current levels of trade on wildlife species and the necessity for CITES-oriented policy initiatives. The U.S. should support these fora's review of trade in non-CITES species as well as CITES species to ensure as complete an assessment can be made of the potential global impact of such trade.

3. On a similar note, through its chairmanship of the CITES Standing Committee, which it will retain through the 1989 CITES meeting, the U.S. is in an appropriate position to promote a more active approach by the CITES Parties to resolving some of the more daunting of CITES' problematic trades. Already, the U.S. has demonstrated commendable leadership in deciding what should be done with the illegal ivory stockpiled in Burundi, and I would like to put myself on the record in support of the Standing Committee's role as the governing board for the treaty and the Parties' representative in administering it through the Secretariat. Likewise, I

would like to express my support for Standing Committee intervention in resolving other illegal trade problems, particularly as they may concern delicate political issues outside of the competence of the CITES Secretariat. Opportunities such as this may arise through the Standing Committee's review of the CITES Report on Alleged Infractions or as appropriate measures are deemed necessary to encourage both CITES Parties and non-Parties to improve their wildlife trade controls.

4. As a final point, I would like to emphasize, Mr. Chairman, the importance of U.S. leadership in CITES on all fronts. I note, for example, that the current U.S. Standing Committee Chairman has been transferred from Washington and would hope that the U.S. would not make a precipitous decision in changing the chairmanship at this critical time for the treaty. I raise this common-sensical point in light of our experience regarding the apparent never-ending reorganization of the Fish and Wildlife Service and the resulting reshuffling of personnel and responsibilities that has crippled this agency's morale and effectiveness.

Finally, I would like to express my very strong belief regarding the responsibility of wildlife importing countries to commit financial, technical, and personnel resources to controlling this world's booming wildlife trade. The United States, EEC, and Japan have infinitely more resources to allocate to field surveys, wildlife trade controls, and technical assistance than do the largely developing countries from which most of our wildlife imports originate. The United States should assume responsibility for ensuring the sustainability of its wildlife imports, and, with the breadth of expertise available to the Fish and Wildlife Service from both the scientific and non-governmental community, is in a position to do so. The Trade Specialist Group, for one, would be more than willing to assist the Service in such an initiative, and we look forward to the opportunity to cooperate with them in assessing the sustainability of the United States' wildlife import trade.

Thank you.

MONITOR
THE CONSERVATION, ENVIRONMENTAL
AND ANIMAL WELFARE CONSORTIUM

1506 19th St., N.W.
Washington, D.C. 20036

(202) 234-6576

STATEMENT ON U.S. ENFORCEMENT OF THE CONVENTION

ON INTERNATIONAL TRADE IN ENDANGERED SPECIES

Before the Subcommittee on Oversight and Investigations

of the House Merchant Marine and Fisheries Committee

14 July 1988

By Craig Van Note

I am executive vice president of Monitor, a consortium of conservation, environmental and animal welfare organizations. Today I am speaking of behalf of the following groups:

American Cetacean Society
American Humane Association
American Society for the Prevention
of Cruelty to Animals
Animal Protection Institute
Committee for Humane Legislation
Earth Island Institute
Friends of Animals
The Fund for Animals
Greenpeace U.S.A.
The Humane Society of the United States
International Fund for Animal Welfare
International Primate Protection League
International Wildlife Coalition
Washington Humane Society

We welcome the opportunity to comment upon the effectiveness of the implementation of the Convention on International Trade in Endangered Species (CITES) by the Interior Department, as well as to examine the overall effectiveness of the treaty organization in controlling the trade in endangered and threatened species. We are deeply grateful to the members of the Merchant Marine and Fisheries Committee for their concern about the plight of the world's vanishing wildlife and what actions need to be taken to protect them from extinction.

It is a tragic fact of the modern world that species are disappearing at a catastrophic rate. Scientists project that a quarter of all different life forms on our planet will be lost in the next thirty years because of mankind's destruction of their habitat,

pollution and overexploitation. The commercial exploitation of many species is the focus of concern of CITES and the U.S. domestic legislation implementing CITES rules, the Endangered Species Act. Many popular species, such as whales, elephants, rhinos, spotted cats, tropical birds, and exotic plants are been devastated by commerce.

Unfortunately, we must report that efforts to control and curtail the international trade in endangered and threatened species are not achieving adequate results. Both the CITES system and the Interior Dept., which largely administers U.S. enforcement of CITES, have failed to properly monitor the wildlife trade and to enforce laws and regulations.

The widespread commercial trade continues in many Appendix I species, the CITES designation for endangered status that in theory prohibits all commercial trade internationally. And many Appendix II species, denoting threatened species which should only be traded if there is no danger to the population, are being heavily overexploited. The proof is the fact that CITES parties are rapidly upgrading many Appendix II species to Appendix I. And many other, unlisted species are being added to the appendices. The ultimate tragedy is the increasing frequency of removing species from the appendices altogether -- because they have been determined to be extinct.

Underfunded, Understaffed and Poorly Managed

The CITES secretariat, which administers the convention from an office in Switzerland, and the U.S. Fish and Wildlife Service (FWS), the Interior Dept. agency which administers federal enforcement of CITES provisions within the U.S., suffer from similar ills: underfunding, inadequate staffing and poor management.

Neither has received the resources required to effectively implement a monitoring program on wildlife trade and to bring about enforcement of international and federal regulations. CITES has grown to nearly 100 member nations over the past 13 years, almost a mini-United Nations. Its small budget and staff are overwhelmed even with the simple task of communicating and coordinating with the membership. The growing international trade in wildlife has overwhelmed the capacity of the secretariat to monitor it, let alone keep up with the poachers and smugglers who are always seeking -- and finding -- new ways to evade CITES regulations.

The Fish and Wildlife Service has never given much attention or priority to its Wildlife Permit Office, its Office of Endangered Species or to its Law Enforcement branch. Tight budgets, reorganizations and high staff turnover have kept the endangered species programs in turmoil.

At the CITES secretariat, profound management problems have resulted in the resignations of two of the five key professional staff in recent weeks, with no replacements anticipated for months. Morale at CITES and FWS is suffering.

Some of the disarray at CITES can be blamed upon poor leadership by the Standing Committee, a panel of representatives from

several member countries that lends oversight and guidance to the secretariat. The present chairman of the Standing Committee is Ron Lambertson of the Fish and Wildlife Service. If Mr. Lambertson and his colleagues on the Standing Committee do not take a more effective role in the management of CITES, we fear the secretariat and the convention itself will collapse into paralysis.

A specific failure in CITES leadership can be placed on the doorstep of Mr. Lambertson and the FWS. At last year's CITES meeting, the member nations decided to send a high-level delegation of representatives from various nations to the United Arab Emirates to address the massive smuggling of poached elephant ivory into and out of the UAE. This was given top priority because this massive loophole in the CITES ivory export quota system was making a mockery of the attempts to save the collapsing elephant populations in Africa.

Now, a year later, nothing has been done. The Standing Committee, with Mr. Lambertson at the helm, has not organized the diplomatic initiative to attempt to persuade the UAE to shut down the ivory entrepot. In that year, tusks from many thousands of poached elephants have flowed through the tiny Persian Gulf nation. Hong Kong ivory carvers, seeking to evade CITES restrictions on dealing in illegal ivory tusks, have even set up two large factories in Dubai where the raw ivory is converted to unidentifiable jewelry and statues. Much of this contraband is then shipped to Hong Kong, where there is no restriction upon imports of worked ivory. And much of that is exported again to the U.S., where the Fish and Wildlife Service regularly allows worked ivory imports without valid documentation of country of origin.

Non-Enforcement

In fact, a huge flow of highly questionable wildlife and wildlife products arrives in the U.S. each year without interference from the FWS or other U.S. enforcement agencies. At the recent House hearing on the plight of the African elephant, evidence was presented that shipments of elephant ivory and hides were approved despite accompanying documents that gave countries of origin "Mexico" or "unknown." We have since found documents reading "India," where the Asian elephant is endangered. In 1986, the FWS allowed imports of hundreds of whole ivory tusks from Zaire, Sudan, Liberia and the Cenral African Republic. All were traded outside the CITES ivory export quota system.

All of this apparently illegal trade to the U.S. isn't really surprising. Nine years ago at elephant hearings before this committee, I pointed out that the Fish and Wildlife Service was even then approving shipments of ivory with countries of origin "Africa" and "Hong Kong," among other unknown locales or places with no wild elephant populations.

The non-enforcement of CITES and Endangered Species Act regulations by the FWS runs the gamut from elephants, crocodiles and

birds all the way to fish and plants. Tens of thousands of poached caiman crocodiles from South America are being laundered through European countries and then shipped to the U.S. as shoes, boots and bags, no questions asked.

A favorite ploy of wildlife smugglers these days is to claim that the exotic birds or plants that they are are trading are not taken from the wild at all, but are "captive bred" or "artificially propagated." The hugely-profitable tropical bird and fish trades export large numbers of questionable "captive bred" animals to the U.S. without any problems. Hundreds of thousands of orchids, succulents and other rare plants pour into the U.S. each year under the "artificially propagated" exemption in spite of overwhelming evidence they are taken from the wild in tropical countries such as India, Thailand, Mexico and Madagascar. The illicit trade from Madagascar is so flagrant that the European Community has rejected shipments for more than a year. The FWS has failed to halt the trafficking from Madagascar.

The FWS has been allowing huge numbers of primates to be imported without adequate scientific evidence that these Appendix II species are coming from healthy populations or even that they have been legally exported from their countries of origin. Several thousand Philippine macaques, for example, are imported annually into the U.S. for research labs in spite of overwhelming evidence that over-exploitation is driving that population toward extinction. There has never been a scientific survey of the status of the macaques in the Philippines, a prerequisite for trade in Appendix II species.

Two years ago, a huge shipment of 361 squirrel and owl monkeys was exported from Bolivia to Miami, destined for research labs working for the U.S. Agency for International Development. Bolivia had banned the export of all live animals, ironically under pressure from the U.S. and other CITES nations concerned with the unregulated wildlife trading that had been rampant in the South American nation. The export documents accompanying the monkeys were fraudulent.

The Bolivian government demanded the return of the animals for release back into the wild. The American dealer who set up the purchase and shipment for AID was arrested by Bolivian authorities. His passport was confiscated and he was ordered to stay in the country until charges against him were settled in court.

Instead of seizing the monkeys, the FWS did nothing. And the State Department provided papers to the dealer that enabled him to flee Bolivia and return to the U.S. The monkeys were furtively moved out of Miami, by agents for AID, to research labs around the country.

This Bolivian adventure, involving federal agencies, was a violation of CITES, of the Endangered Species Act, and the Lacey Act. Enforcement of those laws has been nil.

The same notorious dealer imported two endangered mandrills from Equatorial Guinea last year. No federal action was taken against him.

And now we see that a research lab in New Mexico is entering into a joint venture with the Chinese government to set up a chimpanzee lab in China to do research that is forbidden in the U.S. because chimps are on Appendix I. The American behind this scheme applied to import 175 chimps into the U.S. in 1978. If American companies are allowed to bypass CITES and the Endangered Species Act in this manner, we cannot expect any international wildlife controls to be observed.

In 1984, the CITES secretariat in Switzerland actually helped facilitate the export of 7 lowland gorillas -- Appendix I species -- from the Cameroon by a notorious wildlife trader there. Instead of working with international conservation groups to stop such commercial trafficking in Appendix I species, CITES officials actually promoted the sales.

Humane Transport of Wildlife

The preamble to the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) states that the objective and purpose of CITES is "the protection of certain species of wild fauna and flora against overexploitation through international trade". The articles of the convention require that shipments of live animals be "so prepared and shipped as to minimize risk of injury, damage to health or cruel treatment". The humane transport of wildlife is therefore an integral part of CITES.

Nevertheless, many of the transport methods of the international wildlife trade, particularly involving birds for the pet market, are cruel and inhumane, and cause the suffering and death of millions of animals. According to the U.S. Department of Agriculture (USDA), in the most recent five-year period for which statistics are available, 192,733 birds died while in transit to the United States. These mortalities are due to shock and stress caused by overcrowding, lack of ventilation, lack of food and water, and other inhumane transport conditions. Many birds suffocate or die from extreme temperatures in cargo holds.

The International Air Transport Association (IATA) has published voluntary Live Animals Regulations which are inadequate and do little to improve on the horrible conditions for the transport of many live animals. The preparation and shipment of animals is left in the hands of traders and airline carriers whose principal motivation is commercial gain, not humaneness.

It is because of these inhumane conditions, and recognizing the commitment of CITES to humane transport, that the U.S. Congress passed amendments to the Lacey Act in 1981 that required domestic humane transport regulations. Specifically, the U.S. Fish and Wildife Service was required to promulgate Humane Shipment Regulations in 1981. On November 10, 1987, after six years of delay, and two years after the close of the public comment period, the FWS published a Final Rule on Humane Shipment of Wild Birds and Mammals to the U.S. This final rule was to be effective February 8, 1988. The rigorous enforcement of the regulations in the final rule will go a long way to ensure more humane transport of birds and mammals into the United States.

On February 10, 1988, the FWS, after meeting privately with representatives of the pet industry and animal traders, postponed the final rule. Twelve animal welfare organizations sued the FWS over this action. We sued to have the postponement of the regulations declared illegal. The pet industry lobbying organization and several wildlife traders joined the government's side of the case. In fact, a shipment belonging to one of those wildlife traders was recently found to be in violation of the Endangered Species Act and the Lacey Act. We won our lawsuit in U.S. Distict Court. Specifically, the judge declared that the suspension of the final rule by the Fish & Wildlife Service was illegal, and the regulations are to be enforced immediately.

The humane transport regulations require minimal humane conditions for birds and mammals when they are being imported. They will prevent suffering and death for tens of thousands of animals. It is now up to the government to enforce these needed regulations. We have serious reservations about how rigorously the Fish & Wildlife Service is enforcing these regulations. The regulations contain specific reference to the amount of space birds must be provided, spacer bars, temperature regulation, and ventilation, all of which will help eliminate some of the terrible animal suffering caused by the international wildlife trade. Because of the FWS position on the recent lawsuit, wherein they accepted the intervention of the animal traders, we question whether the Fish and Wildlife Service is committed to vigorous enforcement of these specfic regulations.

CITES adopted the following resolution in 1976:

> Recognizing firstly that many species of animals which are popular in the pet trade are becoming rare or even endangered due both to overexploitation and diminishing habitats and secondly that mortality in the trade and captivity is high, this Conference urges that contracting countries endeavor to restrict gradually the collection of wild animals for the pet trade and to encourage the breeding of animals for this purpose with the objective of eventually limiting the keeping of pets to those species which can be bred in captivity.

In the 12 years since this resolution was adopted, mortality in the pet trade remains spectacularly high. At the same time, the actual numbers of birds and other animals traded worldwide have increased significantly. The United States, through the Fish and Wildlife Service, has done nothing in support of the aforementioned CITES resolution to encourage the limiting of the keeping of pets to those animals that are born in captivity.

The international trade in wild-caught birds has a detrimental impact on the conservation of wild species by depleting their populations in order to supply the pet market. The cruel and inhumane capture and transport methods of this trade, resulting in millions of mortalities, have led to the depletion of many species. As evidenced by their listing on CITES Appendix I, many bird species are now in danger of extinction due to this pet trade.

According to the Royal Society for the Protection of Birds and the International Council for Bird Preservation, at least seven and one half million birds are taken from the wild every year for the

international trade. The United States is the world's largest market for imported wild birds, with approximately 800,000 wild birds imported per year. Experts have estimated that from 5 to 10 birds die for every one that reaches a pet store alive, thereby increasing the suffering and the pressure on populations. The United States and other wealthy consumer countries exploit the inability of poorer exporting nations to adequately control the traders. The legal trade provides a cover for the lucrative smuggling trade.

FWS has repeatedly ignored appeals from Congress and from the conservation community for better implementation and enforcement of CITES. Indeed, Congress twice amended the Pelly Amendment, in 1978 and 1979, to statutorily direct the Interior Department and the Commerce Department to pursue rigorous enforcement of CITES. Interior, the primary agency for administering CITES regulations, has not lifted a finger to carry out these congressional directives.

In 1979 testimony before the Merchant Marine and Fisheries Committee, I stated that the Interior Department was guilty of "misfeasance and malfeasance" in its administration of endangered species laws. I must reiterate this charge today.

Loopholes Everywhere

There can be little wonder that the international wildife trade is out of control when you realize the enormous advantages the modern poachers, smugglers and traders enjoy. Killing or capturing wild species has never been easier with modern weapons, every form of transport from jeeps and boats to helicopters and jetliners, and seemingly endless ploys for evading controls and enforcement. Here are a few of the methods by which CITES and other laws aimed at protecting vanishing wildlife are evaded:

1) Reservations under CITES provide a convenient, "legal" way for Japan and several other major trading nations to simply ignore bans or restrictions. The conservation community regards reservations as outrageous and immoral. Japan, which is rapidly becoming the richest nation on earth and the largest importer of wildlife, still traffics freely in endangered sea turtles, lizards, whales and other species. The U.S. should bring diplomatic and economic pressure to force CITES member nations to withdraw their reservations.

2) Non-CITES nations are still numerous, particularly among producer nations. It only takes a few, such as Burundi, United Arab Emirates and Mexico, to undermine the efforts of CITES nations to control the trading and trade in their indigenous wildlife. Neighboring countries have great difficulty stopping smuggling of their wildlife into the non-CITES nations.

3) Misidentification of species is a well-used ploy by traffickers, who often claim in documents that rare species of birds, reptiles and plants are other, common species that are legally traded.

4) Smuggling of wildlife is a convenient -- and increasingly popular -- way to ignore all constraints in the wildlife trade. The ease of concealing everything from birds and reptiles to ivory is evident in the creative methods that are occasionally exposed. Many wildlife smugglers use the same techniques as the burgeoning international drug trade. Indeed, many of the wildlife smugglers are

also drug smugglers, and vice versa. Some of the most notorious heroin and cocaine dealers in the world have been tied to the wildlife trade. With international commerce growing massively and opportunities to move contraband by air, sea or land everyhere, we should not be surprised that the trade in illicit wildife, which has profit margins on the scale of narcotics, is flourishing.

5) Corruption of whole governments is a phenomenon that puts the illegal wildlife trade on a different plane. By turning their countries into entrepots, and providing "legal" documentation that complies with CITES, the entire system of international law is subverted. Several nations are notorious in this regard, such as Paraguay, Bolivia, Panama, Suriname and Burundi. Crooked governments are a threat to the survival of all endangered species in commerce.

Fish and Wildlife Service Powers

The Fish and Wildlife Service has powers already that would have a major impact on the ivory trade, as well as other species threatened with extinction by commercial over-exploitation.

Most basically, FWS could raise the African elephant from the present threatened status to endangered status under the Endangered Species Act. But the Service has strongly resisted such action over the past decade. If the decline of the species continues, however, the listing is inevitable.

The FWS could enforce its own regulations, specifically the 1978 special rule for African elephants. But despite repeated assurances by officials of the FWS from 1978 through 1981, virtually nothing has been done to crack down on the importation of illegal and inadequately documented ivory.

The FWS could apply the Pelly Amendment provisions for wildlife conservation, as amended by Congress in 1978, to certify nations as being directly or indirectly "engaged in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species" (22 U.S.C. 1978). This broad mandate, to single out violators and by certification make them liable to an embargo of any or all wildlife products, has been steadfastly ignored by the Interior Department.

This committee should demand an explanation as to why the express intent of Congress has been flouted for a decade. The FWS has refused to even publish regulations for implementation of this statute.

On 4 December 1980, 17 senators and representatives, including several members of this committee, sent a letter to Secretary of Interior Andrus encouraging rapid implementation of the 1978 Pelly Amendment statute to achieve better enforcement of CITES. Attached is a copy of this letter. One paragraph is lamentably even more timely today:

"Unfortunately, in the twenty-seven months since this Amemdment became law, the Secretaries of Interior and Commerce have failed to make certifications, conduct investigations, publish regulations or guidelines or take significant action pursuant to this Amendment. The legislative history of this legislation makes it clear

that the Amendment was conceived in large part as a means of making CITES an effective and enforceable agreement. Further additions to the Fishermen's Protective Act, enacted in 1979, mandated expedited action under the Amendment. We find the failure of the Department of Interior to use this potentially powerful tool for assisting endangered and threatened species as Congress intended most disappointing."

A similar section of the Pelly Amendment has been used very effectively by the Commerce Department to pressure whaling nations to reduce their kill from more than 50,000 whales in 1973 to less than 500 whales this year.

The Interior Department demonstrated the capability of such sanctions two years ago when it used other authority to shut down all wildlife imports from Singapore after that nation repeatedly refused to join CITES and continued to traffic openly in poached ivory, rhino horn, endangered reptiles and other protected species. Singapore rapidly capitulated, joined CITES, and has largely shut down the illicit trade in wildlife.

We believe that if the U.S. certified nations that are failing to comply with CITES regulations -- for example, Japan for its many reservations, and Mexico for its refusal to join CITES or to comply with CITES standards -- those nations serving as massive loopholes in the international wildlife protection system would bring themselves into compliance rather than face possible loss of access to the U.S. market for their wildlife products.

The failure of the CITES system to protect threatened species (Appendix II) is exemplified in the booming trade in ivory from the African elephant. If we examine how CITES and its member states have addressed the massive poaching, we can understand why the elephant population in Africa has fallen by half in a decade and is continuing to collapse over almost all of its range.

At the recent House hearing on elephants, the renowned expert on African elephants, Dr. Iain Douglas-Hamilton, stated: "Nine years ago when I testified before your committee I spoke against a ban on ivory imports. I was assured that the CITES treaty would soon work satisfactorily where ivory was concerned. It did not." He added: "The CITES Ivory Export Quota System has not worked satisfactorily. There are too many middlemen and too many loopholes which allow ivory to get into the world trade. The whole system at present is out of control. There are too many loopholes and the traders are clever at exploiting these. Even in the United States a lot of ivory has come in illegally."

CITES Ivory Export Quota System

It is clear that the CITES ivory quota system is not working. The proof is not only in the continued high level of trafficking in ivory -- most outside the quotas -- but most tragically in the sharp, relentless decline in virtually every elephant population in Africa. The claims of the CITES Secretariat and the FWS that the quota system is "working" and only needs "more time" to become fully effective are not credible.

Virtually all ivory produced in Africa in recent years has been poached. Not many elephants live long enough to die of old age or disease. And scientists figure that only a small percentage of the ivory from natural mortality is ever found. A few thousand elephants are culled in management programs in southern Africa. The estimated 80,000 to 100,000 elephants that die each year to supply the ivory trade are almost all shot or poisoned by organized gangs of poachers. The tusks are moved easily across borders and overseas.

The fact that some of this flood of ivory gets "legitimized" by governments or by CITES doesn't make it any less poached. Once we understand the myth of "legal" ivory and recognize the unpleasant reality that monitoring and control of the ivory trade is a failure, then we must come to the conclusion that a total international trade ban on ivory may be the only solution to the problem of elephant conservation.

The Cites secretariat launched its African elephant ivory export quota system in 1976 by immediately legalizing two huge stockpiles of poached ivory being held in Burundi and Singapore. This move to legitimize illegal ivory was not approved at the CITES meeting in 1985 when the quota system was adopted. The unilateral action by the secretariat staff and ivory trade consultants was tantamount to rewarding criminal middlemen who are a vital link in the deadly ivory industry.

A handful of Chinese traders in Singapore made overnight profits estimated at $15 million when CITES made it legal -- and much easier -- for them to put their contraband on the international market. Two Chinese traders operating out of Burundi also profited mightily. Much of the 160+ tons of ivory was quickly shipped off to the two largest markets, Hong Kong and Japan.

CITES gave legal documents to the mountain of poached ivory with the understanding that Singapore and Burundi would comply with the CITES ban on all illegal ivory. Singapore apparently has. But Burundi, which has no elephants within its borders, has continued to serve as the entrepot for elephant poachers throughout Africa. Hundreds of tons have been coming in on trucks, boats, and airplanes. At this very moment, more than 100 tons of ivory -- the product of perhaps 10,000 massacred elephants -- is stockpiled in Burundi awaiting export by air to the United Arab Emirates and other outlaw nations.

The ivory quota system is largely based upon the dubious assumption that the ivory trade is well-monitored and that poached ivory can be isolated and denied access to the world markets. The truth is that very little of the trade is monitored -- or legal.

In fact, one of the largest trades of ivory in all of Africa -- and flowing outside of Africa to Asia -- is <u>totally unmonitored.</u> Tens of thousands of tusks annually -- perhaps 200,000 or more over the last decade -- have been smuggled out of central and southern Africa without a trace. This is the South Africa connection.

<u>The South African Connection</u>

We find it astounding that CITES and other agencies supposedly monitoring the ivory trade have consciously avoided any mention of the great volume of ivory flowing through South Africa from Angola, Zaire, Zambia, Tanzania, Zimbabwe, Mozambique and Botswana.

11

According to reliable sources in Africa, a massive smuggling ring has been operating for years, with the complicity of South African officials at the highest levels of the government and military, to funnel ivory and other contraband out of Africa. None of this ivory shows up on any customs books in Africa -- and very little at destinations in the Middle East, India and the Far East.

Airplanes, trucks, ships and even railroads bring the booty south to depots where huge stockpiles of ivory are maintained in South Africa. That CITES member nation, which projects the image of a conservation-minded model for Africa, is in reality one of the largest wildlife outlaws in the world.

The South African military has cynically aided the virtual annihilation of the once-great elephant herds of Angola. Jonas Savimbi and his UNITA rebel forces in Angola, largely supplied by South Africa, have ruthlessly liquidated perhaps 100,000 elephants to help finance the 12-year-old conflict. Most of the tusks have been carried out on South African air transports or trucks, although some moves through Zaire and Burundi.

The sturdy South African 4-wheel-drive trucks that carry war materiel and other supplies across the Caprivi Strip to Savimbi's forces in southern Angola return laden with ivory and valuable tropical hardwood. The South Africans' staging post at Runtu in the Caprivi Strip warehouses the contraband. Tractor-trailers then transport the ivory across Namibia to South Afica. The Angolan ivory trafficking is managed by two former Portuguese colonists from Angola who have close ties to the South African military.

One of the largest elephant populations in Africa has been nearly destroyed -- along with a once-healthy rhino population -- by roving bands of soldiers and poachers armed with automatic weapons. Remarkably, nobody in Africa -- or even in CITES -- wants to talk about this scandal, which makes other, more-publicized poaching in East Africa pale by comparison.

Another major and shadowy ivory trade emanates from Zambia, where more than 10,000 elephants have been poached annually in the vast Luangwa Valley. Corruption at the highest levels of the Zambian government and complicity with South Africa in moving the ivory out have brought down a wall of silence. Sources say much of the ivory has been transported in sealed railway boxcars from Zambia south. The railroad is operated by the South African government. Some of the ivory has been smuggled north to Burundi.

A third major flow of poached ivory aided by South Africa is from Mozambique, a nation devastated by a guerilla army financed and directed by the South African military. Reliable reports indicate that the Renamo rebel forces have killed tens of thousands of elephants in recent years to help finance their insurrection. The State Department estimates that Renamo has killed more than 100,000 Mozambican civilians over the last decade as well. The ivory is moved south to South Africa and north to Burundi.

Other heavy flows of ivory to South Africa have been coming out of Zaire, Botswana and Tanzania. The preferred -- and easiest -- form of transporting all the poached ivory is on the many military and

civilian transport planes that fly north from South Africa dozens of times each week delivering arms, medicine, food, machinery and other supplies throughout central and southern Africa.

The first rule of the pilots on these flights is to never fly empty. So on their return flights to South Africa -- from as far as northern Zaire -- they load up on contraband and other valuable cargo. Not only ivory is on board, but also gold, diamonds, cobalt and coffee.

This secretive trade route operated by the South Africans has probably brought more than 100 tons of ivory annually into South Africa. Where does it go from there?

Most of the ivory is shipped out on aircraft and boats to Taiwan -- a non-CITES nation that is rapidly replacing Singapore as the Far Eastern outpost for wildlife smuggling -- and to China and India, both CITES parties which should not be trafficking in the South African ivory. Some undoubtedly is routed to the United Arab Emirates.

An investigation of South African exports for the years 1982 and 1983 showed that ivory tusk shipments out of the country were at least ten times the amount officially imported. (Virtually none of the tusks generated internally by culling at Kruger Park are exported whole. That ivory is worked in country.)

South Africa is not the only government where official corruption is deeply involved in the trade in poached ivory and other wildlife. Almost all African governments -- and many elsewhere -- suffer from high-level corruption. Nine years ago in my testimony at the House elephant hearing, I spoke about "The French Connection" that allowed Emperor Bokassa of the Central African Empire and President Mobutu of Zaire to ship planeloads of poached ivory from their countries to France under the protection of then-president Giscard d'Estaing of France. At future hearings I am sure there will be revelations of other corrupt leaders and governments.

Congress has heard some bad news about the world's wildlife today. There will be more bad news -- and extinctions -- if radical reforms are not made in the commerce in wild plants and animals. The political institutions and enforcement mechanisms are failing to protect species from overexploitation.

Mankind has made the war against the drug dealers a high priority. Are not the whales and elephants and primates, the butterflies and orchids of sufficient value to us and the well-being of our planet to give their survival high priority, too? Or will we allow greed and criminality to defile and destroy the natural world and our civilization?

We look to the Congress to help provide laws and continued oversight, leadership and resources to make the conservation of endangered and threatened species a successful endeavor. We are particularly grateful to Mr. Foglietta, Mrs. Schneider and Mr. Studds for organizing this oversight hearing on the fate of the wildlife.

########

[redacted]

United States Senate

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

WASHINGTON, D.C. 20510

December 4, 1980

The Honorable Cecil D. Andrus
Secretary of the Interior
C Street Between 18th and 19th Streets N.W.
Washington, D.C. 20240

Dear Secretary Andrus:

The next annual meeting of the parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) will be held in New Delhi, India, from 25 February through 8 March 1981. Due to the imminence of this meeting and to the accelerating worldwide destruction of wildlife, it is crucial for the United States to take immediate action on the following measures to positively affect the course of the meeting.

The first measure involves the Federal Republic of Germany's proposal to the CITES meeting that all populations of fin, sei and sperm whales be placed on Appendix I (protected status) of the Convention. While the United States' proposal to increase protection for some stocks of these whales is commendable and a step in the right direction, it is not as comprehensive as the West German proposal. Thus, it appears to us that the long-standing U.S. goal of achieving a moratorium on all commercial whaling would be best served by supporting the West German proposal. Opposition to this proposal, or even failure to support it, would further damage the already tarnished U.S. image as a leader in international efforts to conserve whales and other endangered and threatened species.

The fin, sei and sperm whales have been on the U.S. Endangered Species List since 1970. Since these whales do not respect national boundaries, it is surely in the best interest of our policy to support all reasonable means of protecting them. The U.S. should actively support the West German proposal.

Second, the United States should act immediately to publish regulations to implement the 1978 amendments to the Fishermen's Protective Act (22 USC 1978). The Pelly Amendment to the Fishermen's Protective Act originally provided the President with the option to embargo fishery products from nations certified by the Secretary of Commerce to be diminishing effectiveness of an international fishery conservation program. In 1978, Congress broadened Section 8 of the Fishermen's Protective Act to include sanctions against foreign nations certified as being directly or indirectly "engaged in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species." The Secretary of Interior was assigned responsibility for certifications under this paragraph for all species other than pelagic species (which are the responsibility of the Secretary of Commerce).

Unfortunately, in the twenty-seven months since this Amendment became law, the Secretaries of Interior and Commerce have failed to make certifications, conduct investigations, publish regulations or guidelines or take significant action pursuant to this Amendment. The legislative history of this legislation (more fully described in the attached sheet) makes it clear that the Amendment was conceived in large part as a means of making CITES an effective and enforceable agreement. Further additions to the FPA, enacted in 1979, mandated expedited action under the Amendment. We find the failure of the Department of Interior to use this potentially powerful tool for assisting endangered and threatened species as Congress intended most disappointing.

We believe, however, that the United States, by acting promptly to publish either draft regulations or guidelines for implementing this Act, can still positively influence the CITES meeting. A stated U.S. policy of considering all non-CITES member nations as subject to certification under the Fishermen's Protective Act would have a profound psychological effect on the meeting and hasten the day when CITES itself adopts a provision to ban wildlife trade between member and non-member nations.

We urge you to initiate actions immediately to either publish regulations or guidelines, or to begin investigations for possible FPA certification under Section 8, paragraph 2 of FPA, in order to make maximum use of this potent tool at the upcoming CITES meeting.

At a time when one species a day is estimated to be becoming extinct as a result of human activities, we can hardly afford further delays.

Cordially,

ALAN CRANSTON

BOB PACKWOOD

WARREN MAGNUSON

CHARLES PERCY

LOWELL WEICKER

HOWARD BAKER

MARK HATFIELD

JOHN CHAFEE

DON BONKER

ROBERT STAFFORD

LES AUCOIN

PETE MCCLOSKEY

JAMES L. OBERSTAR

DICK CHENEY

DAVID EMERY

ANTHONY BEILENSON

GERRY STUDDS

ED FORSYTHE

Legislative History of CITES Related Amendments to the Fisherman's Protective Act

The Pelly Amendment to the Fishermen's Protective Act originally provided the President with the option to embargo fishery products from nations certified by the Secretary of Commerce to be diminishing effectiveness of an international fishery conservation program. In 1978, Congress broadened Section 8 of the FPA to include sanctions against undesirable trade or taking of endangered or threatened species, to be administered by the Secretaries of Interior and Commerce. The Amendment, adopted as P.L. 95-376, provides that

> "when the Secretary of Commerce or the Secretary of Interior finds that nationals of a foreign country, directly or indirectly, are engaged in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary making such findings shall certify such fact to the President."

The amendment allows the President, upon receipt of such certification, to direct the Secretary of the Treasury "to prohibit the bringing or the importation into the United States of ...wildlife products...from the offending country for such duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the General Agreement on Tariffs and Trade.

P.L. 95-376 defines "international program for endangered or threatened species" as "any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is enforced with respect to the United States, the purpose of which is to protect endangered or threatened species of animals". According to the report of the House Committee on Merchant Marine and Fisheries (H. Rept. 95-1029), this definition "would have the effect of including the Convention on International Trade in Endangered Species of Wild Fauna and Flora..." (CITES). The legislative history reveals that the amendment was conceived in part as a means of helping make CITES an effective and enforceable agreement.

Since the Department of Interior has responsibility for administering programs dealing with endangered and threatened species other than pelagic species, primary

In 1979, during development of the Packwood-Magnuson Amendment (P.L. 96-61), it was shown that the Department of Commerce has indulged in excessive delays in making certifications required under the FPA, and that the Interior Department had taken no action of any kind. Accordingly, language to expedite actions under Section 8 of FPA was added, as follows, as a part of the P-M Amendment.

> "(3) In administering this subsection, the Secretary of Commerce and the Secretary of Interior, as appropriate, shall--
>
> (a) Periodically monitor the activities of foreign nationals that may affect the international programs referred to in paragraphs (1) and (2);
>
> (b) Promptly investigate any activity by foreign nations that, in the opinion of the Secretary, may be cause for certification under paragraph (1) or (2); and
>
> (c) Promptly conclude; and reach a decision with respect to; any investigation commenced under subparagraph (B)."

Fifteen months have passed since the above language became law. The Interior Department, as far as we are able to learn, has still not drawn up regulations, undertaken investigations, or taken any other action to fulfill its responsibility under the Fishermen's Protective Act.